



University of Bradford eThesis

This thesis is hosted in [Bradford Scholars](#) – The University of Bradford Open Access repository. Visit the repository for full metadata or to contact the repository team



© University of Bradford. This work is licenced for reuse under a [Creative Commons Licence](#).

EXAMINING THE DYNAMIC CASCADING OF INTERNATIONAL NORMS
THROUGH CLUSTER GENEALOGIES

1998 UN Guiding Principles on Internal Displacement and Other Cases

Benita SUMITA

submitted for the degree of
Doctor of Philosophy

Division of Peace Studies, Faculty of Social Sciences
University of Bradford

2016

Abstract

Title: Examining the dynamic cascading of international norms through cluster genealogies

Keywords: Constructivism; Internal Displacement; Norm Cascading; Replication; Particularization; International norms; Multilateral Agreements; UNSCR 1325, Chemical Weapons Convention; 1998 UN Guiding Principles

In 1998 the UN Guiding Principles on Internal Displacement were developed following years of crises faced by the millions of people experiencing forced displacement, especially those internally displaced. These Principles were widely considered to be precedent setting, both historically and normatively. However, the examination of the construction of the international norms that underpin the Principles indicates that there are important epistemological weaknesses in widely used constructivist frameworks that understand normative shifts in international relations. They are critiqued as being impedingly linear, temporally compressed and analytically obstructive in its agent-centric view of norm cascading. This research aims to address some of these gaps with an enhanced life-cycle model using cluster genealogies and the processes of replication and particularization. The reformulated framework is tested for robustness and feasibility using two preliminary cases – UNSC Resolution 1325 and the Chemical Weapons Convention. It is then used to conduct an in-depth original analysis of the development of the 1998 UN Guiding Principles. The findings in the case of the Guiding Principles show, for example, that though the acceptance of the IDP definition was a big leap, the replication and particularization of human rights limits the humanitarian scope of the Guiding Principles, and also brings into question existing humanitarian protection of IDPs under the Geneva Conventions. Meanwhile, rooting them in ‘sovereignty as responsibility’ has not shifted the community of states’ intersubjective take on sovereignty, but it has added to the existing normative tension – individual vs. state – that underpins the very understanding of sovereignty.

Acknowledgements

This thesis would not have been possible without the persistent encouragement of my husband, Danny Geevarghese, and support of my parents. I am also extremely grateful to my supervisor Prof. Owen Greene who has been patient with me, and constructively detail-oriented on my work. A special note of thanks goes to Prof. Jim Whitman with whom I began my PhD, and to my doctoral colleagues and friends, Roberta Holanda Maschietto, Susan Flämig, Sarah Njeri and others who spent many many hours deliberating ideas with me. I am also thankful to the Brookings Institute for allowing me to access their unarchived data on the Guiding Principles, and to Dr. Roberta Cohen for helping me to find them. Finally, I would like to dedicate this thesis to Libby Kerr who is sadly no longer with us. We have had many conversations about the internal displacement crisis that pushed me to dig deeper into its development and normative framework. I am deeply indebted for all the support and encouragement I have received from family and friends over the years.

Table of Content

Abstract	ii
Acknowledgement	iii
List of Major Figures and Tables	vi
Chapter 1: Introduction to Thesis	1
1.1. Research Purpose	1
1.2. Hypothesis and Question	2
1.3. Order and Change in International Anarchy	3
1.4. Locating Internal Displacement	5
1.5. Research Strategy	11
1.6. Chapter Outline	17
Chapter 2: Denaturalizing the Construct of International Norms	20
2.1. Constructivism: A Useful Framework for this Research	20
2.2. What Are Norms	23
2.3. Tenets of Constructivism in International Studies	44
2.4. Conclusion	49
Chapter 3: Examining the Life Cycle of International Norms	51
3.1. International Norms Emerge and Develop: A Life Cycle Begins	52
3.2. Norm Emergence: The Beginning	53
3.3. Norm Cascading: The Tipping Threshold	56
3.4. Internalizing Norms: Completing the Life Cycle	73
3.5. The Gaps: Missing Dynamics of Norm Development	74
3.6. Conclusion	82
Chapter 4: Dynamic Norm Cascading: An Enhanced Theoretical Framework	85
4.1. Scope of the Enhanced Framework	86
4.2. Dynamic Norm Cascading Framework	90
4.3. Applying the New Enhanced Framework	117
Chapter 5: Preliminary Testing of the Enhanced Model	126
5.1. Case I: UN Security Council Resolution (UNSCR) 1325	127
5.2. CASE II: Chemical Weapons Convention (CWC)	155
5.3. Reflections on the Application of the Model	175
Chapter 6: Internal Displacement: From Crisis to Norm Creation	178
6.1. Internal Displacement: The Crisis	178
6.2. The Development of International Norms on	

Internal Displacement	179
6.3. Meaning, Power and Legitimacy by Replication and Particularization	203
6.4. Conclusion	212
Chapter 7: Dynamic Norm Cascading of Guiding Principles on Internal Displacement	214
7.1. Stage 2 – Unpacking the Guiding Principles	216
7.2. STAGE 3: Re-examining Internalization in Colombia	274
7.3. Change and Order through the Guiding Principles	283
Chapter 8: Conclusion	290
8.1. Formulations on the Enhanced Theoretical Framework	291
8.2. Theoretical Contributions	293
8.3. Contributions to Knowledge in Preliminary Case Studies	298
8.4. Findings from In-depth Study on the Guiding Principles	306
8.5. Considerations for Future Research	316
Bibliography	317
Annex: Definitions of Norms Across Disciplines	352

List of Major Figures and Tables

Figure 1: Stages of Classic Norm Life Cycle	52
Figure 2: Enhanced Life Cycle of International Norms	89
Figure 3: Norm Ecosystem of the Guiding Principles	272
Table 1: Analytical Matrix of the processes in Enhanced Model	91
Table 2: Chronology of Dynamic Norm Cascading of UNSCR 1325	153
Table 3: Chronology of Dynamic Norm Cascading of CWC 1993	173
Table 4: Analysis of the Drafts of Guiding Principles	200
Table 5: Analysis of the Guiding Principles	205
Table 6: Chronology of Dynamic Norm Cascading of Guiding Principles	284

CHAPTER 1.

INTRODUCTION TO THESIS

“We are clearly witnessing what is probably an irresistible shift in public attitudes towards the belief that the defense of the oppressed in the name of morality should prevail over frontiers and legal documents.”

- Former UN Secretary General Javier Perez de Cuellar, 1991

(as cited in Cohen and Deng 1998: 1)

1.1. Research Purpose

A positive shift in attitudes towards the masses of displaced populations and their protection is what former UN Secretary General de Cuellar is referring to, especially to those internally displaced. Before the end of the millennium, the shift in attitude resulted in the establishment of the UN Guiding Principles on Internal Displacement. Thomas Weiss and David Korn (2006: 9-10) said, “It is hard to imagine an idea that is better than IDPs to illustrate the importance of crucial changes in discourse and reframing of possible solutions to international challenges.”

Weiss and Korn claim that the Westphalian paradigm of sovereignty and its guarantees of non-intervention did not stand up to the challenges posed by the increasing number of human rights violations. “The efforts” that led to the creation of the international norms on internal displacement and other associated institutional arrangements enabled the normative understanding of sovereignty to “adapt,” “evolve and transform” as sovereignty as responsibility (Weiss and Korn 2006: 6). This Kuhnian (1970) assertion of a dominant paradigm being replaced by a new one is problematic. This research questions and critically examines exactly this claim – have the norms that apply to situations of internal displacement paradigmatically shifted the normative framework of international relations to soften its stance

on sovereignty? This thesis argues that the normative shifts attributed to the quiet adoption of the Guiding Principles are not paradigmatic, but nevertheless dynamic and more complex than have been understood.

To examine and develop this claim, the core of this research is centered on unpacking and critically examining the international cascading of the norms of the Guiding Principles. Here the thesis traverses two paths – one is in examining and (re)understanding the normative foundations of the Guiding Principles to better comprehend its cascading impact on international relations. This path of inquiry backtracks to the other, and therefore has to be dealt with first – it involves critically examining theories of norm development in the constructivist framework for which they are known to be academically robust in the field of international relations. This examination leads this thesis to propose a revised theoretical framework of norm development rooted in unpacking the ontology and epistemology of norm cascading – a revision that is based on and inspired by Finnemore et al's life cycle model.

1.2. Hypothesis and Question

The theoretical examination leads this thesis to propose that:

Constructivist accounts of how norms spread and develop are deficient in terms of the mechanisms by which these processes occur. Norm cascading is more dynamic and multi-dimensional. Norms extend their reach and reinforce their power and legitimacy through replication and particularization before state acceptance and adherence, and do not merely cascade through state acceptance and adherence.

Two questions guide this present research. The first question is: How do international norms cascade before state acceptance and adherence? The second, and equally important question relates directly to the case of the Guiding Principles: What are the normative underpinnings of the Guiding

Principles, and how have they cascaded within existing international normative structures?

Thus this present research sets out to achieve two objectives. The first is the development of an enhanced life cycle model that would enable a deeper examination of norm development and cascading as dynamic and complex processes. The revised theoretical framework enables the second objective, which is a multi-dimensional study of the Guiding Principles to better comprehend its normative significance – both in terms of impacting change and maintaining order. The enhanced model is also tested on other international norms to substantiate its robustness, and that of the research proposition. Before concluding this introduction with an outline of our research strategy, the next two subsections sets some background on our overall approach.

1.3. Order and Change in International Anarchy

This research tends to take a broadly constructivist approach, and its associated theories, because this approach appears to be most useful for understanding the social and normative dimensions of international relations. Constructivism may be seen as relatively new in the field of international relations – a quarter of a century – compared to its predecessors such as realism, liberalism and others. But it quickly captured the much-needed ontological and epistemological space, first in international relations, that was hungry for a deeper and more nuanced understanding of social relations. The 1980s saw the growing influence of constructivism as the most predominant post-positivist theory. Titles that begin with the ‘constructivism of...’ or ‘constructivism in...’ or ‘construction of...’ are aplenty and infiltrate many disciplines.

Constructivism aims to explain and explore the world beyond its visible, observable material resources and capacities – an exploration of social facts

or norms. It is to move away from a causal explanation of the world determined by materialistic individuals driven to act to meet their selfish ends and aspirations, as enabled or constrained by their material circumstances. This is not to say that humans are not driven, deterministic, selfish or aspirational. This also does not imply that a material world does not exist. Knowing social reality in a post-positivist sense is to know how people know their world; in a constructivist sense it means to know how people construct their world, and in turn constructed by it.

At the global level, constructivism looks at how states construct international relations, and in turn is defined and characterized by it. Ontologically, constructivism is about the construction of social reality and epistemologically, it is about the social construction of knowledge (Onuf 1989). In a constructivist understanding, social reality, in the international relations context, is that of order and stability and the study of the underlying structures that enable the maintenance of this reality. To understand how this order and stability is constructed would involve a study of how actors in the international system understand order and stability; i.e. construct meaning collectively, which is indicated by social knowledge or social facts, about their social reality.

Herein lies the most interesting aspect of the theoretical framework of constructivism for our purposes – in that it not only helps to understand order and the equilibrium of social coexistence, but also understands that change is possible without tipping or disrupting the existing equilibrium. Constructivist scholars provide models¹ that explore the path and process of

¹ Here are some of the proponents of the theories of constructivist international relations: Finnemore, M. and Sikkink, K. (1998), International norm dynamics and political change, *International Organization*, Vol.52 No.4, pp.887-917; Björkdahl, A. (2002), Norms in International Relations: Some Conceptual and Methodological Reflections, *Cambridge Review of International Affairs*, Vol.15, No.1, pp.9-23; Risse, T., Ropp, S.C. and Sikkink, K. (1999), *The power of human rights: international norms and domestic change*, Cambridge: CUP; Florini, A. (1996), The evolution of international norms, *International Studies Quarterly*, Vol.40 No.3, pp.363-389; and others

change. However, a critical engagement with the theoretical literature reveals that, as can be seen in chapter 3, these models, though ground breaking, demand further development.

For instance, the life cycle model of Finnemore and her associates that is at the focus on this research does not explain change and order – an important theoretical dimension of constructivism. In fact, change itself is limited to state acceptance and adherence to an international norm. This understanding is far too simplistic and reductionist, and also where this thesis' specific focus originates.

It was in trying to understand how internal displacement and the Guiding Principles were conceptualized to fit the international social fabric that led this research to dig deeper into what change, if any, was brought about by this construct, and if and how any shift in order may have been experienced due to this change. But the existing constructivist frameworks were deficient in explanatory purchase. A small but conceptually and theoretically significant gap needed to be addressed. This is not only a theoretical contribution, but also strengthens the empirical contribution to knowledge with a better understanding of internal displacement and its normative framework.

1.4. Locating Internal Displacement

Internal displacement is perhaps one of *the* most complex protracted emergencies of our times. It is thus ironic that in addressing crises of internal displacements, these situations are, more often than not, responded to, even today, as they were humanitarian in nature – in need of basic materials to survive. In so doing, the complexity of internal displacement is overlooked and misunderstood by these very humanitarian responses. Mark Duffield (2001: 208) explains this best in his book on global governance and new wars as he writes about the case of internally displaced Southern

Sudanese in 1990s, "...during the course of the 1990s, UN agencies, donor governments and NGOs, albeit unintentionally, complemented state aims and facilitated the desocialization and subordination of displaced Southerners. Part of the reason...is the inability of aid policy to address political complexity."

This misunderstanding is deepened further when human rights is manipulated to conform to existing humanitarian responses instead of changing and conforming practice to reflect human rights (Duffield 2001: 222). The concept of Internal displacement is, as are the millions of people categorized as internally displaced, caught between the boundaries of national sovereignty, growing international human rights web, and nascent international laws. Owing to this complexity the international community often address situations of internal displacement with a humanitarian response, leaving long-term issues unaddressed.

Independent, neutral, non-state entities and organizations, such as the International Red Cross, are always welcome to provide unconditional humanitarian assistance without any judgment. Internal displacement is one of the many tragic conundrums of our times because though it may seem like a primarily and physically an internal situation, it is still one that requires solutions and responses from the international community. Internally displaced people need support and assistance not only as a humanitarian response, but also in ensuring long-term retributive and restorative responses to violations of their human rights.

Francis Deng (2001: 143), the first UN Special Representative of the Secretary General on IDPs, called this 'the paradox of the well fed dead': "The tendency in the international community is to respond to the crisis with humanitarian relief assistance, with little or no attention given to protection. Internal displacement is indeed a humanitarian issue, but it is also a human

rights concern. If we are to avoid the paradox of the “well fed dead,” it is critical that assistance be closely linked to protection.” However, the question remains as to whether the Guiding Principles have addressed the protection gap or not. And if they have, then how have the Guiding Principles impacted the understanding and practice of other international norms, such as sovereignty or humanitarianism.

These normative complexities make internal displacement and its Guiding Principles an ideal focus for this thesis. Displacement has been a constant concern since we have had violence and wars, yet it is only as recently as 1998 that the international community accepted a body of principles to guide them in their responses to situations of internal displacement. This body of principles too is not new; the world was not agreeing to revolutionary normative changes in 1998, they were only recognizing – not even formally adopting – existing international norms and other legal provisions that can be applied in the situations of internal displacement specifically. So if there are normative and legal provisions that are already applicable to situations of internal displacement and the protection of the rights of the internally displaced, what normative shifts did the Guiding Principles bring about? Abdul Malik, who has been internally displaced for over two decades, may be asking a similar question. “I know that we are still looked upon as second class citizens here,” said Abdul Malik to a reporter in early 2013 about his host community in the northwestern district of Puttalam in Sri Lanka.² Malik is one of over 75000 Muslim Tamils displaced in 1990 in the conflict ravaged island nation. Unlike the over 90,000 Sri Lankans accounted for as displaced by the International Displacement Monitoring Center (IDMC) in early 2014³ who were perhaps displaced for a number of years, Malik has

² IRIN (2013) Sri Lanka’s Muslim IDPs 25 Years On, Irin: The Inside Story on Emergencies, <http://www.irinnews.org/report/97297/briefing-sri-lanka-s-muslim-idps-25-years-on>, 21 January 2013, accessed on 10 June 2014

³ IDMC, Sri Lanka: Country Profile, Internal Displacement Monitoring Centre, <http://www.internal-displacement.org/south-and-south-east-asia/sri-lanka/>, accessed on 10 June 2014

been displaced for most part of the Sri Lanka armed conflict, and now post-conflict conflict phases – that adds to over 25 years. So Malik and most of the 75000 Tamil Muslims forced out of their homes in 1990 by the then emerging group LTTE – Liberation Tigers of Tamil Eelam – have spent a quarter of their lives as displaced, and second-class citizens in their own country.

Malik, and those in similar protracted situations of displacement are far beyond being just labelled internally displaced; they are structurally and systemically displaced within the boundaries of their own country that has the responsibility to ensure their rights as citizens be upheld. A few tens of thousands who have taken refuge in Puttalam have registered as having returned but are reportedly finding it understatedly difficult to rehabilitate socially and economically. In a report at the end of the 2013, the IDMC reported, “Tens of thousands of Muslims expelled from the north by the LTTE in 1990 have registered as having returned, but in reality they are thought still to be living in their places of refuge in Puttalam or alternating between Puttalam and the north for want of adequate assistance. They have struggled to re-establish livelihoods and access housing and land in either place. Some who said they would prefer to integrate locally in Puttalam have been unable to register as residents there” (IDMC 2013). This complex, and more often than not protracted, situation of internal displacement is the reality of people like Malik not only in Sri Lanka, but also in Kashmir, Russian-occupied territories of Ukraine, Bosnia, Kurdish regions of Iraq, border regions of Lebanon, Syria and many such countries and regions of blurry boundaries.

Fifteen years since the quiet adoption of the Guiding Principles on Internal Displacement in 1998, and the number of IDPs has increased year-on-year. Over 33 million people were internally displaced due to conflicts and

violence alone as of January 2014.⁴ Of this, 10 million remain unprotected and unassisted. This means that at least 10 million internally displaced people do not even have access to humanitarian support. In 2014 alone, the Syrian conflict has forced close to 9 million people out of their homes and unable to return within their own country. Setting up humanitarian corridors was one of the primary tasks of those who met for peace talks led by UN representative Lakdhar Brahimi. This too was unsuccessful. This is not to say that the normative framework on internal displacement is not considered effective enough to be accepted as a response to the appalling situations of those forcibly displaced. But it still begs the question as to why it has not become the normative force behind people, groups and organizations trying to help, support and protect IDPs.

But the High Commissioner of the Office of Human Rights, Zaid Raad Al Hussein feels the human rights situation is not all bad as suggested in his remarks at a October 2014 press conference, “Human rights are now being upheld in more countries than ever before. It seems to me that the broad trajectory of humanity is a positive one, and that in an increasing number of communities and countries, all human beings are seen as fully equal in dignity, and their rights are largely observed... Credit for that should go to all those countless brave and committed men and women – civil society, activists, journalists, lawyers, state employees and politicians – who over the decades have eventually succeeded in firmly rooting international human rights norms in their societies.”⁵

Though it seems contradictory in the light of the plight of hundreds of thousands who are displaced within their own home countries, Commissioner Al Hussein is right in identifying a “positive trajectory.” He has

⁴ Figures are drawn from the International Displacement Monitoring Center (IDMC).

⁵ OHCHR (2014), *Press Conference Statement by United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein*, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15173&LangID=E>, accessed on 2 January 2015

rightly credited people for it. The world in which human rights seem all so natural and the only way to exist and co-exist is only a few decades old. It is rooted far back in history but in its intersubjectively collectivizing international normative form, it is still only in the first leg of its journey, making a “positive trajectory” a big step in the right direction.

Michael Freeman (2011: 15), in a recent edition of his book on *Human Rights* suggests that there are two views to the origins of this human construct. “According to one view, the concept of human rights had little history before the establishment of the United Nations in 1945. On this view, the history of human rights would be the history of the UN concept. A more common view is that the contemporary concept of human rights has a much longer history. The view is better, because it enables us to investigate the historical and philosophical bases of the modern concept.” This research agrees on both views put forward by Michael Freeman in that human rights is a human construct that dates back centuries and millennia, but for the purposes of this research it would be prudent to go back as far as the establishment of the United Nations, which having accepted the second view also means that any UN human rights conceptualization is deeply and richly rooted in history and philosophy.

But in the short period of time since the establishment of the UN, there has been a proliferation of human rights or rights-based norms, including the Guiding Principles on Internal Displacement. Does the increasing number of human rights norms signal an inherent weakness in its normative framework that new norms need to be constructed to keep human rights alive? What is their purpose? And how can their impact and normative significance be studied? Though some may believe that there is a general optimistic shift towards upholding and protecting human rights, grievous violations and infractions still persist. So if adherence to norms is not a guaranteed measure of continued existence of human rights, then what is? There is a

piece missing in our understanding of how human rights norms structurally persist in practice and policy, which lies in the examination of how norms cascade outside the perspective of state acceptance and adherence.

1.5. Research Strategy

There are two pillars to the research strategy used in this thesis: one is the case study of the Guiding Principles on Internal Displacement, and the other is the epistemological building of mid-level theory that supports the case study. The constructivist theoretical framework is used as the foundation. A review of the constructivist literature on the concept of norms and its development not only proves that the framework is ideal for this research, but also helps to identify existing gaps or weaknesses and formulate a way to address them. Existing constructivist theories of international norms take a linear approach to understanding the development of an international norm without exploring linkages to existing international normative structures. The theories imply a unidirectional and synchronic process of norm development primarily dependent on state acceptance and adherence. But it is a more dynamic and diachronic process – a development process over time. Therefore the thesis then aims to construct a mid-level theory, which is inspired by Finnemore et al's life cycle model, but enhanced to address some of the weaknesses and examine norm cascading more dynamically. There is an added strategic layer that helps to fortify both the case study and the mid-level theoretical framework pillars: this is inclusion of preliminary test cases.

They are:

- United Nations Security Council Resolution 1325 (2000)
- Chemical Weapons Convention (1993)

Preliminary testing helps in three ways: it demonstrates how the renovated life cycle model can be applied, it reveals any strengths, weaknesses or

difficulties in applying such a model, and it also provides an opportunity to adjust or rectify the model. There are also three reasons for the choice of these preliminary test cases, as elaborated in the following subsection.

1.5.1. Case Choices

(i) Common Organizational Platform

Both cases exhibit the significance of an organizational platform to launch or formalize the emergent norm. An existing or new organizational platform is an important element in the constructivist framework of norm development. The preliminary cases chosen here both originated at the United Nations. This makes the level of analysis in each case similar thereby ensuring consistency in the preliminary testing phase, making the deeper testing of the Guiding Principles more concrete, valid and reliable.

(ii) Indicators of replication and particularization

Each of the preliminary test cases have elements of broader understandings of human rights or have borrowed from existing norms, conventions and laws – sometimes in meaning and sometimes in practice, and sometimes in both. However, while drawing from existing international norms, the emerging norm also particularizes the focus of its purpose more specifically.

For instance, UNSCR 1325 addresses a very broad issue of protecting the rights of women in situations of violence and conflict, increasing women's role in peacebuilding and maintaining peace. As stated in the resolution, it draws on existing international norms of the Geneva Conventions, Additional Protocol II, Refugee Convention, Convention on the Elimination of All Forms of Discrimination against Women of 1979 and even the Rome Statute of the International Criminal Court. However, the resolution also aims to particularize the focus to women and their rights and significance in conflict and peace.

(iii) Spectrum of legality

An important differentiating factor was also a determining factor for the case choices – the type of international norm. Here the type is identified within a spectrum of legality. The two cases vary in their legal nature. Resolutions are not expressly referred to as an instrument of the United Nations in its Charter but it has become a preferred choice of instrument. “Resolutions are the common legal instrument for an organ or body to make a recommendation or statement, recall a fact, express an opinion, or undertake any other matter of substance” (Gruenberg 2009: 481). Therefore, a UN Security Council resolution has direct legal standing. However along the spectrum of legality, UNSC resolutions may fall behind conventions and treaties that are considered hard laws, such as the Chemical Weapons Convention.

The purpose of this research is not to investigate the level(s) of effectiveness of international norms, legal or otherwise. But it is perhaps necessary to justify the choice of the test cases that falls at different points along the spectrum of legality from soft to hard law. It is clear from the three cases chosen here that each has some legal status because they reiterate existing norms that are already international laws or have the standing of international law. The debate that arises here is whether cases with varying levels or nature of legality can be tested with the same consistency. The short answer is yes. The longer explanation, as Finnemore (2000: 703) argues, raises the lack of distinctiveness of legal norms. “What distinguishes legal norms from other norms is simply not clear” in their effectiveness or the influence they exert. Therefore the degree of legality of the cases chosen here does not impede on the investigation into development of international human rights norms.

1.5.2. Data Sources

This research relies on archive documents – primary and secondary sources – and two interviews. During the very early stages of this research, Mr.

Dennis McNamara, then Director of the Internal Displacement Division of the UN Office for the Coordination of Humanitarian Affairs (OCHA) was contacted. Though the interview is not used in the thesis, it was formative. The second was an email interview of one question with Dr. Roberta Cohen of the Brookings Institute and a crucial member in the development of the Guiding Principles. She is aware, in no uncertain terms, that her answer to this one question will be used in this thesis.

With regard to data sources, secondary information was accessed on the UN's extensive and systematic online library. These include draft resolutions, final resolutions, statements made by member countries and more. But from my reading of the available literature on internal displacement and the development of the Guiding Principles, it became clear that the UN archives does not have all the documents relating to the development of the normative framework on internal displacement, especially documents on the preliminary legal discussions and debates, confidential memos, exchanges between various experts, organizations, state representatives and practitioners in the field.

Though several books made references to these documents, they were not available in the UN archives – online or in print. So the search for these documents began by contacting several authors, and staff at UNHCR, OCHCHR, and the UN archives and Francis Deng himself. Each person took this researcher a step closer to the information. It was clear that the early paper trail on the development of the Guiding Principles were not officially archived anywhere. The search that began in June 2011 finally led to the documents in April 2012 at the Brookings Institute in Washington D.C. where it was still sitting in four cardboard boxes, yet to be archived. It is thanks to Roberta Cohen who located the unarchived data trail.

The documents found at Brookings dated back to the early 1980s, and these included:

- i. Normative debates and discussions between legal and non-legal experts looking at how to draft the GPs based on existing international laws and norms
- ii. Notes and summaries from several roundtable discussions organized by various governments and non-governmental bodies
- iii. Statements made by individual UN member-states
- iv. Notes and briefs from the meetings of the UN inter-agency task force on IDPs
- v. Several early drafts of the GPs with comments, reservations and notes from experts, organizations and member-states
- vi. Preliminary reports on IDPs by the International Law Association with their draft of the GPs
- vii. Internal communication – letters and faxes – between Mr. Deng, Ms. Cohen and various UN agencies, government and non-government representatives on aspects of the principles and internal displacement
- viii. Individual lobbying strategies implemented to promote the scope, nature and need for the GPs with UN member-states
- ix. Several preliminary studies on human rights, humanitarianism and internal displacement
- x. Draft resolutions tabled at the UN Commission of Human Rights, ECOSOC, the UN General Assembly and the UN Security Council
- xi. Notes, reports and statements from the Refugee Policy Group (RPG) where Ms. Cohen was a senior adviser at the time
- xii. Newspaper reports on the initial stages of the development of the Guiding Principles

These original primary documents together with the archived material collected through the UN library make for a rich and concrete research.

Before going on to the chapter-wise outline of this research, this section ends with a brief elaboration of the research agenda.

1.5.1 Three-fold Research Agenda

The strategy set out in this research enables to fulfill a three-fold agenda, as follows:

Theoretical – In deliberately examining the cascading of international norms before state acceptance and adherence through an enhanced and revised model, this research is aptly situated to explore and expand the theoretical boundaries of constructivism from the mid-level, revealing a more dynamic and complex development of norms than has thus far been understood.

Empirical – Three international norms are examined using the revised model – UNSC resolution 1325, Chemical Weapons Convention 1993 and the 1998 UN Guiding Principles on Internal Displacement. These cases have thus far not been studied in this manner, which make them concrete contributions to knowledge and the constructivist literature. More importantly, understanding the embedding of internal displacement and its normative framework within the broader international structure of norms is of particular importance to this research.

Policy Practice – The broader aim of this research is to be the first step in an attempt to understand the intricacies of the policy development process(es) at the international level, particularly at the United Nations. It is one step towards the direction of looking at how international policy development balances the push towards consensual change within the gravitational pull for order, stability and sense of security amongst the community of states. The nexus of change and order and their inter-linkages are revealed in the case studies.

1.6. Chapter Outline

The thesis begins in chapter 2 with an ontological and epistemological exploration and denaturalization of the concept of norms across disciplines – from philosophy, politics to sociology and economics. It reveals the socially constructed nature of norms, though they seem to exist naturally. It also reveals their significance in understanding, on the one hand, order, coexistence and cohesion and, on the other hand, change; one concept but twin nature. This chapter aims not only to contribute towards building the theoretical background to the thesis, but also to develop a definitional table on the concept of norms (see annex). The table enables a cross-disciplinary comparison of the features and characteristics of norms, and leads to revealing striking similarities. This is especially significant in understanding normative international relations that display quite the family resemblance.

This is followed by a critical examination of the constructivist theories of international norms in chapter 3. Starting with a brief exploration of the origins of the school of constructivist thought, its foundations and tenets, the chapter lays the groundwork to study better and deeper the theoretical framework and its challenges with special emphasis on Finnemore et al's life cycle model. Revealing gaps in the theoretical framework, the thesis argues that constructivist accounts of how norms cascade are deficient in terms of the mechanisms by which these processes occur. Norm cascading is more dynamic and multi-dimensional. Norms extend their reach and reinforce their power and legitimacy through replication and particularization before state acceptance and adherence and do not merely cascade through state acceptance and adherence.

Chapter 4 sets out the mid-level theoretical framework, and develops the key stages. It develops a revised and improved model based on the Finnemore and associates' life cycle framework. The revised model does not abandon the life cycle structure, but reworks and adds to it to give it the

potential to examine norm development in complex and dynamic ways. Stepping back from the linear life cycle perspective, the reformulated framework proposes to study the development of international norms in three stages. The first stage starts where the life cycle model does – with the norm entrepreneur, the immediate events and occurrences that lead to the emergence of a norm. In addition to this synchronic analysis, this stage also examines the norm to identify broad norm clusters or groups.

These clusters are examined genealogically in an effort to situate the case under study within existing norm ecosystems. This will allow a better understanding on how norms are embedded, and how a specific cluster may have evolved through processes of replication and particularization. At the end of this stage, the analysis reveals change and order, which have been classified as catalytic and cyclical change. The genealogical probing is substantiated with quantitative indicators of state acceptance, as used in the classic model. The final stage of the revised model turns back to the life cycle framework's focus on internalization. Here a country is chosen to better assess how a norm is internalized.

UNSC Resolution 1325 and the 1993 Chemical Weapons Convention are the case studies used to test the new framework in chapter 5. Preliminary testing helps in three ways: it demonstrates how the renovated life cycle model can be applied, it reveals any strengths, weaknesses or difficulties in applying such a model, and it also provides an opportunity to adjust or rectify the model. This chapter flows from one case study to the next, starting with the UNSCR 1325. Each case is tested in three stages, as developed in chapter 4.

There are several reasons for selecting these two test cases. They represent different types of international norms and normative instruments, allowing this present research to examine the extent to which the model can

be used to test the development and spread of any type of international norm. Meanwhile, the cases touch on different areas of international relations. While UNSCR 1325 relates to issues on women, peace and security, CWC relates to the non-use of chemical weapons. This also adds to the robustness of testing, as the model and hypothesis can then be applied to different normative spheres, and across norm ecosystems demonstrating the dynamic nature of norm development and life. Finally, the test cases chosen are theoretically of varying degrees of legal obligation and adherence. Many scholars have argued that the degree of legality of an international normative instrument bears little weight on its application or realization, and it is more a question of perception and accepted understanding within the international community (Kratochwil 1989; Finnemore 2000; Abbott, Keohane, et al. 2000; Whitman 2010). This thesis will not delve into the impact of the legal nature of a norm on its development or life, except to note its legal standing within the international community as one of several potentially relevant factors.

Chapters 6 and 7 are dedicated to the examination of the Guiding Principles. These chapters are the crux of the thesis. Chapter 6 focuses on stage one of the model that examines the synchronic view of the development of the norm. This original analysis of the development of the Guiding Principles aims to offer nuanced insights into the development of the Principles by studying the original documents, including a thorough examination of the various drafts of the Principles to understand its evolution better. The penultimate chapter examines the Principles through stages two and three of the revised model. It reveals the dynamic nature and processes of cascading of the clusters of norms that make up the Principles. The in-depth examination will reveal the normative underpinnings of the Principles, what it means, and how it constructs internal displacement and IDPs. The concluding chapter 8 will bring together the research findings and future research implications.

CHAPTER 2.

DENATURALIZING THE CONSTRUCT OF INTERNATIONAL NORMS

Reason is not in the world, we impose it on the world.

Immanuel Kant

This chapter is a precursor to the critical examination of constructivist theory of international norms that will be discussed in the next. Here we review the nature of the theoretical framework of constructivism, its tenets, and its central element – norms. The examination of this key ingredient of constructivism, and its theories in relation to international norms will help to lay out some of the limitations of the latter, especially in understanding norm cascading in a dynamic way, and in particular cascading that is not limited to state adherence. In turn, this enables the thesis to outline a mid-level theoretical response to a better examination of norm cascading, as will be detailed in chapter 4.

2.1. Constructivism: A Useful Framework for this Research

The post-positivist turn in international relations – away from the codification of patterns of interaction between states (Carr 1964: 13), and their rational-choice assumptions based on material or observable dimensions of self-interest and power – paved the way for debates⁶ (Maghrooni 1982; George 1989; Brown 2001) that looked for ways to understand the international interaction of states beyond materialism and methodological individualism (Checkel 1998). Here constructivism emerged as “the fastest growing oppositional movement with IR theory” (Brown 2001: 52). Through conceptual elaboration and sustained empirical analysis (Price and Reus-

⁶ The first great debate took place between the realists and idealists in the beginning of the 20th century. It focused on the central concept of international relations. By mid-century, the ontological debate shifted to an epistemological question of how to study international relations between the traditionalists and behaviouralists. It is the third debate that criticized the lack of a normative perspective.

Smit 1998), those promoting a broadly constructivist approach were not only able to conceptualize social facts or norms, but also to contribute to understanding their role in international relations.

2.1.1. Nature of Constructivism

Ontologically, constructivism is about the construction of social reality, and epistemologically, this leads to the social construction of knowledge (Guzzini 2000). However, constructivists are also ontological realists because they believe in the existence of a material world (Wendt 1999). The difference is that they understand the material world as being determined by the meaning ascribed to it by agents – how an idea constitutes the material – making it ideational yet dual in ontology. They capture a middle ground from which “reality exists independently from our accounts, but does not fully determine them” (Adler 1997: 324).

As one of the constructivist pioneers, Onuf (1989: 38), said: “We construct worlds we know in a world we do not.” This means that constructivism tries to understand how actors or agents understand the world they are in – their social reality – by studying their behaviour as well as their discourses. This in turn means, studying what guides behaviour by exploring collective shared understandings – normative structures and norms – and how they come about. Constructivism aims to explain and explore the world beyond its visible, observable material resources and capacities. It is to move away from a causal explanation of the world determined by materialistic and self-interested individuals. This is, however, not to say that agents are not driven, deterministic, selfish or aspirational. This also does not imply that a material world does not exist, or that materialism does not have its explanatory purchase.

Drawing primarily from the field of sociology and the works of Durkheim (1898), Weber (1949) and Giddens (1979), constructivists offer “alternative

understandings of a number of the central themes in international relations theory, including: the meaning of anarchy and balance of power, the construction of state identity and interest and the relationship between them, an elaboration of power, and the prospects for change in world politics” (Hopf 1998: 172).

As Fierke (2007: 167) summarizes, constructivists “emphasis the social dimension of international relations and the possibility of change.”⁷ Constructivist pioneers, such as Nicholas Onuf (1989), Friedrich Kratochwil (1989) and Alexander Wendt (1987, 1992, 1999) laid out the early foundations of the social dimension of international relations. These first constructivists did not cross paths though their works put forward similar ideas.

Onuf (1989) is credited with coining the name of the theory – constructivism – though in his own book he claims that the philosophical underpinnings of constructivism are not his alone. His constructivism – heavily indebted to Anthony Giddens – focuses on rules – informal as well as legal rules – as the theoretical middle between understanding social relations and structures or social facts. Meanwhile, Wendt (1992, 1995 and 1999) focused on the creation, recreation and reproduction of state identities in international relations and how they depend on shared knowledge and collective meaning

⁷ This is not to say that constructivists form one united theoretical framework. There are various kinds of constructivism (Reus-Smit 2009), and also degrees of constructivism that ranges from conservative or conventional, to critical and radical (Hopf 1998). In its systemic form, constructivism focuses solely on the interaction of states. At the unit-level form that looks at the “relationship between domestic social and legal norms and the identities and interests of states.” Bringing the two forms together is the holistic approach. This form “treats the domestic and international as two faces of a single social and political order” (Reus-Smit 2009). The degrees of constructivism varies primarily in the approach adopted – foundationalism or anti-foundationalism – by conventional and critical constructivist. Conventional constructivists are interested only in discovering identities and their associated social practices that can then explain certain actions. Meanwhile critical constructivists are not only interested in discovering identities but also understanding how these identities came to be accepted as truth.

that are constituted by the fundamental structures of international politics, which are social and not strictly material.

Kratochwil's constructivism is epistemological, which uses rules and norms – terms he uses interchangeably – as a means to understand political life and its analysis (Zehfuss 2002). He sees the international system as an “artifice of man-made institutions, such as, not limited to states. In general institutions are settled or routinized practices established and regulated by norms” (Koslowski and Kratochwil 1994: 222).

2.2. What Are Norms

The prevalence of structures of social knowledge and social practices that are common to an international system is neither a recent phenomenon nor a recent discovery. They were also characteristic of the ancient civilizations – including code of Hammurabi, laws of Babylonia and Assyria and many more. Historical research has shown that civilizations that have grown to a certain level of cultural prominence also develop simultaneous relations with the outside world “that soon take the shape of a whole system of institutions” (Korff 1924: 246-247).

Korff (1924: 249) uses institutions to mean practices that include international law, moral ideas and conceptions. In his view, moral ideas and conceptions would “crystallize” into a system of international law over time. A normative perspective on international relations has clearly been prevalent in the discipline since the early twentieth century, but perhaps not as widely accepted as with constructivism.

Constructivism may have made international norms an intellectual trend since the 1990s, but its conceptual foundations have been borrowed heavily from sociology, anthropology, political science and even psychology. In international relations, the study of norms is most prominent in the areas of

international organizations, international political economy, regime theory and the behaviour of states domestically. However, there is no agreed upon definition of the term norms; in fact there is no agreed upon usage of the term itself. This is not a discouraging aspect in any way; it only indicates the complex and dynamic nature of norms; and the fact that a range of variants and 'schools' of constructivism have developed.

Various constructivists use different terms to refer the same concept – norms are sometimes referred to as rules, or values, or social institutions. For instance, Onuf and Kratochwil use norms and rules interchangeably. Kratochwil (1989: 10) claims that “while all norms are directives, not all directives function like norms, and while all rules are norms, not all norms exhibit rule-like characteristics.” Definitions⁸ range from norms being characterized as commands, values, and facts to standards of behaviour, institutions and more. At a metaphysical level, norms can be described as the impermissibility of inferences of whatever complexity from “is” to “ought” (Brandom 1979), and *ought* to *is*.

2.2.1. *Tracing Norms from Early Philosophers*

Concerns about the normative order of society permeated and were embedded in not just the debates on the constitution of society but the ideal constitution of society as deliberated in Plato's (1894, 2000) *The Republic* to Hobbes' *Leviathan* and Pufendorf's (1729) *On the Law of Nature and Nations*. The early philosophers were elucidating the essentials of the co-existence of a group of humans under a sovereign power through the observance, exercise and application of social, moral and legal norms.

Though the nature, function and development of norms were not in their immediate and explicit scope of exploration, the normative bounds of co-

⁸ A table of definitions on norms across disciplines is included in the Annex.

existing were ubiquitous in, for instance, Plato's (1894, 2000) inquiries on the just behaviour of man; or Hobbes' (1962) design and definition of a commonwealth structured by the laws of a sovereign, their observance by man and the performance of the covenant for fear of punishment; and Kant's exploration of the *Foundations (or Groundwork) of the Metaphysics of Morals and Metaphysics of Morals* where he asserted that it was a moral requirement for rational human agency to conform to categorical imperatives. Ecclesiastical as these inquiries may sound, these philosophers were modeling the reasons and justifications for the rational existence of man – both moral and legal – in a social setting that not only allowed for the survival of man in his natural form as free and equal but also cooperatively with, and not infringing upon the existence of, other free and equal men. Much of this thinking followed on from the pre-existence of natural, and sometimes divine, law and its binding character as the ultimate source of normative order in the nation-state system.

These early philosophers could be categorized into naturalist and non-naturalist schools of thought. The difference in the two schools essentially rooted in the acceptance of norms as natural facts or not. Even within the naturalists, there are ontological and epistemological differences. In Hobbes' (1962) understanding, the state of nature could only exist as the anarchy of free wills with no laws or sovereign authority to coordinate the coexistence of men. This was because Hobbes believed that “*every private man is a judge of good and evil actions*” and therefore would not necessarily agree with each other or nothing pressurizing – civil law or authority – them to agree with each other on good and evil actions in the state of nature.

But for a naturalist like Pufendorf (1792: 3), the state of nature can reveal dos and don'ts for human social behaviour. Socialized humans then imposed standards or “modes” of behaviour that have been extracted from experience of what is onto the existing natural state of being. The purpose of

modes was for “the guiding and tempering the freedom of voluntary action, and for the procuring of decent regularity in the method of life” (Pufendorf 1792: 3). Immanuel Kant took a similar line of thought on human social behaviour. For Kant (1964: 21), the imperatives of social behaviour – what he called “categorical imperatives” – were a priori. They could not be learnt from experience but were instinctual or led by pure reason; similar to Pufendorf’s natural normative order.

The early Western thinkers were not focused on norms per se, but concerned themselves with the behaviour of humans, behaviour that would promote “normative” order. The philosophers were not referring to the act or behaviour alone; they were referring the “right” kind of behaviour. They were referring to the nature of human behaviour; such as just, good, right, appropriate and so on. Therefore it was not enough that behaviour could be described in “a way in which we in fact regulate our conduct.” It was necessary that “they make claims on us; they command, oblige, recommend or guide” (Korsgaard 1996: 8). These were claims laden with moral weight or values that translate into behaviour that ought to be followed. These standards of behaviour were not just acts to be followed, but it was the nature of the acts that enabled social co-existence by adhering to the right behaviour.

2.2.1.1. From Normative to Norms

According to early Western philosophers, this standardized social co-existence created normative order. Focused on the moral weight and value of human behaviour, much of the early deliberations on human social behaviour did little to understand norms but explained the normative as “a special realm of fact that validates, justifies, makes possible and regulates normative talk, as well as rules, meaning, the symbolic and reasoning. These facts are special in that they are empirically inaccessible and not part of the ordinary stream of explanation” (Turner 2010: 1). However the

philosophical concerns of normative order provided the twentieth century legal philosophers, legal theorists and other social scientists with a good foundation to address norms in a more direct and explicit manner.

Legal philosophers, such as Hans Kelsen (1991: 2), described norms as commands that institute values. “The Ought – the norm – is the meaning of a willing or act of will, and – if the norm is a prescription or command – it is the meaning of an act directed to the behaviour of another person, an act whose meaning is that another person (Or persons) is to behave in a certain way.” It means that one can express a will as an obligatory action on the part of another’s behaviour. This act of will has also to be recognized either through experience or observation. As an obligation, there is always the possibility of non-conformity. And to Kelsen, a norm that stipulates a certain behaviour thereby making it obligatory also creates a value. Following Kelsen’s magnum opus – *The General Theory of Norms* – there was scant legal and economic attention to the study of norms until the mid-1990s.

Among the few who did examine this from an economic perspective, Adam Smith adopted a rationalist approach to understanding what he called ‘rules of conduct’. These were “the only principle by which the bulk of mankind are capable of directing their actions” by “continual observations” that “lead us to form to ourselves...what is fit and proper either to be done or to be avoided.” Smith’s concern was mainly economical in that he thought it was in the best interests – read beneficial for – of man to follow the rules of conduct. He indirectly points to social regularities that are formed through continual observation; similar to the understanding of the new norms scholars (Smith, as cited in Coase 1976: 7-8).

The new norms scholars,⁹ as Richard McAdams (1997) called them grew through the 1990s. They tried to rationalize the cooperative social behaviour of humans. The overarching view was that there were “informal social regularities” individuals felt “obligated to follow because of an internalized sense of duty, because of a fear of external non-legal sanctions, or both” (McAdams 1997: 340). Meanwhile, the social nature of norms has been the core of investigation and study for sociologists for decades.

2.2.1.2. Norms of Right Behaviour to Social Norms of Coexistence

From the narrow focus on proper and dutiful behaviour, sociologists delved into broader and tougher questions not just about human social behavior, but also more importantly about what held societies together? George Homans (1951: 121), identifying the glue of societies as norms, defined them as “ideas in the minds of the members of a group...” Meanwhile, some like Elliot Aronson (2007: 19) defined “conformity” of human social behaviour as “a result of real or imagined pressure from a person or group of people.”

Unlike Homans or Aronson who did not state the purpose of norms, Talcott Parsons (1966: 18-19) points out, “they have regulatory significance for social processes and relationships... Norms are primarily integrative; they regulate the great variety of processes that contribute to the implementation of patterned value commitments.” But according to Max Weber not every social action was normative, in that it had social character.

Weber’s (1971: 77) social action could be classified as a norm only if “the actor’s behaviour is meaningfully oriented to that of others.” The infusion of meaning, not just value or moral weight, into the concept of norms opened

⁹ The new norms scholars include Robert Ellickson (1991), Lisa Bernstein (1992), Robert Cooter (1994, 1996, 1998), Dan Kahan (1997, 1998), Lawrence Lessig (1995, 1998), Richard McAdams (1995, 1997), Randal Picker (1997), Eric Posner (1997, 1998a, 1998b) and Cass Sunstein (1996b).

up a whole new avenue of sociological understanding of societies. Anthony Giddens (1979), quite aptly, called this meaningful human social behaviour structures. They were not just standards of behaviour or social practices in a society; or institutionalized approaches and responses in a society. But they also relate “on the one hand to the constitution of meaning, and on the other to the sanctioning of modes of social conduct” (Giddens 1984: 18).

Milton Rokeach also spoke of institutionalized values along the same lines as Giddens. His institutional values were “socially shared cognitive representations of institutional goals and demands”. They signify a set of standards that make it possible “to be regarded by others as having satisfied societally and institutionally originating definitions of morality and competence” (Rokeach 1979: 48).

The idea and concept of institutionalization introduced norms into the discipline of economics as well through the development of game theory and new institutionalism. Within new institutional economics, norms can be explained in a top-down and bottom up manner. For instance, Nelson and Sampat (2001: 40) explored the dos and don'ts of human socio-economic behaviour as “institutions” or “social technologies”. Nelson and Sampat's top-down approach takes social technologies as “institutions, but rather only those that have become a standard and expected thing to do, given the objectives and the setting.” On the other hand, the bottom-up approach is not outcome-oriented but can influence the outcome by social constraints that affect the incentives and behaviour of individuals through social interaction.

As this cross-disciplinary overview has shown, definitions and descriptions of norms vary in many ways, and there is no agreed upon standard. However, irrespective of the number of definitions, there are certain common characteristics for the broad concept of norms that are be extracted

here. Norms are: (i) social imperatives; (ii) identifiable by their friction between impulses to freedom vs. imperatives of order; (iii) expressions of value; (iv) collective intentions of a critical mass; (v) regular social interactions; (vi) instruments of legitimacy and legitimization; and (vii) sanctionable. These will help to better understand norms, and its centrality in constructivist theories.

2.2.2. Characteristics of Norms

(i) Of social imperatives

Norms express oughts – the ideal dos and don'ts of social coexistence. These oughts are considered ideal human social behaviour that enables social order. It is the belief that following certain dos and don'ts can enable a social environment of cordial, non-conflictual and cooperative interaction. The belief is not a natural phenomenon but develops around a constructed meaning, which Weber (1971: 77) explains as, “not every type of contact of human beings has a social character; this is rather confined to cases where the actor's behaviour is meaningfully oriented to that of others.” Giddens (1984: 18) more directly refers to norms as the “constitution of meaning,” in that they create meaning and are the language of social interaction. Practices and norms around state sovereignty and human rights – explored in later chapters – are a couple of instances.

Both Weber and Giddens indicate that a norm is a social imperative only if it is authoritatively meaningful. For a norm to be authoritatively meaningful, it has to not only be meaningful to the individual performing the normative act or following normative practice, but it also has to be understood and recognized as such by others within a specific social context. Both Weber and Giddens point to the intersubjective nature of a norm, as a related characteristic of the social nature of an imperative.

However, it should be noted here that meaningful social order is not a zero-sum situation. There can be degrees of oughtness, with expectations of regularity and consistency in behaviour that become embedded over time (Geertz and Diehl 1992). Societies or social groups do not crumble or descend into disorder at the slightest deviation from the meaning or standard behaviour. Reality can vary in degrees from what ought to be, especially because norms form a complex and dynamic web of social imperatives that conflict and coexist. This does not mean that social order does not exist, but that there is room for flexibility.

Giddens (1984) is clear on this point when he relates norms to constitution of meaning wherein “constitution” can be seen as a process of negotiating the social language of human behaviour, and not the act in itself. A similar proposition was provided by Homans (1951: 124) who said, “Our norms are ideas. They are not behaviour itself, but what people think behaviour ought to be.” This leads to the second characteristic of interest vs. imperative.

(ii) Impulses of interest vs. imperatives of order

Central to this characteristic is agency, which Geertz and Diehl (1992) say is difficult to determine because it is not easy to entangle norm-like behaviour from actions of self-interest. But Geertz and Diehl’s observations need to be qualified by the distinct definition of agency where intention is not the same as capability. Agency is not identified with the intention of the agent or state but with the capability to carry out an act and the conscious effort in doing so (Giddens 1984). Intention is only secondary to an agent’s capacity to choose to follow a normative practice, which may or may not be in conformity with self-interest. In social psychology, this is understood as living “in a state of tension between values associated with individuality and values associated with conformity” (Aronson 2007: 13), such as accepting or rejecting asylum seekers for the benefit of one’s own domestic affairs.

Pufendorf (1729: 3) characterizes the tension as “...tempering the freedom of voluntary action...” while Kant (1964: 15) notes that norms – he calls them categorical imperatives – “command everyone without regard to his inclinations...” Recent academics, like Aronson (2007: 19) refer to this tension as “real or imagined pressure” or an exertion of influence over behaviour independent of the beliefs of individual actors (Thomson 1993), or “the propensity to feel shame...” (Elster 1989: 105) This pressure or tension compels one to consider foregoing self-interest for the larger social interest because they are not always “coterminous” (Geertz and Diehl 1992: 637), thereby creating an obligation.

(iii) Expressions of value

Despite the tension, norms have power of persuasion and they compel certain accepted and expected behaviour. The compelling force comes from meaning associated with the norm, the obligation, and the value attached to it. This essential feature of norms has spawned centuries of thinkers and scholars concerned with the right and appropriate behaviour of man to the imperatives of social order. Even international relations scholars, such as Adler (1991: 60) highlight this importance: “Values are mixed with varying amounts of knowledge, beliefs and expectations because our judgments of what should be are related to our judgments of what is.” For instance, values placed around international peace and security compel certain collective understandings and actions.

His conceptualization of values is borrowed from Milton Rokeach (1973; 1979), who explored human values from a sociological perspective. According to Rokeach (1979: 48-50) individual and institutional values are equally important. Individual values are those “socially shared cognitive representations of personal needs” whereas institutional values are “socially shared cognitive representations of institutional goals and demands”. Therefore Rokeach’s values, as shared by Adler, is not only about standards

of socially accepted behaviour and expectations, but it also signifies an intersubjective nature, as a set of standards that makes it possible “to be regarded by others as having satisfied societally and institutionally originating definitions of morality and competence”.

Value judgments are evaluations expressed through the self-imposed compliance with normative order as against the impulse to freedom. Though it is an expression of internally self-imposed compliance, it is linked externally to the result of understanding and recognizing the complex interconnected structures of meaning which enable social order and interaction. Sunstein (1996: 916-917) differentiates the types of values that can arise from complying with norms. There could be “intrinsic value” in choices a person makes.

For example Sunstein illustrates that whether to exercise by jogging or playing squash depends on which the individual values, as more fun or healthier. Meanwhile, being seen playing squash could augment the status of the person indicating a “reputational value”. In addition to how people would like others to perceive them and measure their standing in society, there is “self-conception value” (Sunstein 1996). The image an individual would like to project and would like others to believe is also an image the self has to conceive. According to Smith (Coase 1976: 7), humans should not have any trouble in projecting a magnified self-worth, “we are all naturally disposed to overrate the excellencies of our own character.”

However, some influential philosophers have viewed the value-expressing characteristic of norms through a lens of morality. Though this view has strong leanings to moral philosophy, these scholars include philosophers like Plato and Kant to contemporary thinkers and academics such as Nietzsche, Kelsen, Rokeach and others. “...The judgment that some behaviour is ‘valuable’ or ‘has value’ (and in this sense, is ‘good’) means

that this behaviour – as modally indifferent substrate – is decreed to be obligatory in a norm, is the content of an Ought.” What Kelsen (1991: 61) explains here is that norms can incline or obligate people to behave in the appropriate manner because of its value or as Rokeach (1979: 50) notes, behave in ways that “...have satisfied societally and institutionally originating definitions of morality and competence.”

But as the legal academic Michael Perry (2000) asks in an article titled, “What is morality anyway?” Though Perry argues back and forth inconclusively between the religious and non-religious basis of morality, his core idea is that morality is a reason for deciding for or against a behaviour. By vesting morality with the weight of reason, it would seem that while value is related to the consequence of a norm, its morality stems from the origin of the norm – a sense that morality is unconditional. In Kant’s understanding, “Reason is shown, not merely in understanding the situation or in recognizing the quality of the completed action, but in willing the action as an action of a certain kind...” (Paton 1947: 87)

In this sense, most norms can be considered moral and all norms can contain or exhibit expressions of moral value upon reflection and experience rather than to burden all norms or standards of social interaction to be predisposed to morality. The measure of value – moral or otherwise – ascribed to norms could also vary for different individuals which does not question the norm per se, but reflects the kind of tension or obligation that a person feels and the specific context of the social situation.

(iv) Collective intentionality for a critical mass

One of the overarching features thus far has been the social and collective nature of norms. Though norms guide individual behaviour, they have meaning and value only in a social context. Individual beliefs and routines may not be considered normative unless they reach or achieve critical mass

through acceptance. This is also a crucial theoretical point in constructivism that will be discussed in the next chapter.

Critical mass is first and foremost a quantitative factor. It demonstrates the extent of the norm's acceptance, but it does not mean that the norm will be adhered to or followed. Secondly, it is a formal indicator of collective intention. Therein also lies the challenge – not all norms are formal, expressly documented and or formalized by signatures and ratifications. And in some cases, normative practices exist, perhaps in different forms, long before they are actually formalized. For instance, sovereignty and state practices and understandings around it have been around long before it was formalized as non-interference in the internal matters of member states in the early Hague Conventions and then the UN Charter.

The critical mass of a norm can also accumulate over time. The increasing acceptance of norms is one way to indicate their legitimacy and power. Adhering to norms also situates and reiterates identity within a social group. Conforming to the standards of behaviour that are collectively understood because of a common meaning creates and/or reiterates a sense of social belonging. This also means that members of a group are able to expect others' behaviour, responses and reactions in specific social situations because the person belongs or is considered to belong in the group. And being able to not only understand and share social meaning but also make meaningful social expectations is the essence of regularity.

(v) Regularity of social interactions

Regularity of social interaction is reflected in the pattern of behaviour, as indicated in Pattaro's (2000a) definition of norms, or what Giddens (1979) identifies as institutionalized approaches and responses in society. Characterized as creating social imperatives or standards of social

interaction that regulate human social behaviour, norms also enable patterns of regularity or patterns of expectations.

This is not to say that regularity implies rigidity or an unchanging social order. Change or the possibility of change is part of the normative order. For instance, slavery was the norm until the early nineteenth century when the abolitionist movement formed and gained momentum. This led to its abolition, civil liberties and equal rights for all, which are the norms today. Meanwhile slavery exists in other forms, such as bonded labour or human trafficking. Regularity is characteristic of a norm, but do not determine or create the norm. It is indicative of the possibility of social interactions given its accepted and shared nature. When regarded as a regularized or regularizing, a normative order can also be considered normal.

Scholars like Thomson (1993) define norms as behaviour that is considered “normal” amongst a collective with a caveat that all normal behaviour are not norms. In Thomson’s understanding, constant repetition can only be considered normal and not normative – a distinction “between the *is* and the *ought*”. Other authors have pointed out that definitions within disciplines such as sociology “stress regularity, normality and uniformity,” foregoing normativity (Björkdahl 2002). Regularity, normality and uniformity are characteristic of repetition, not normativity. Other like Kelsen (1991) and Raymond (1997) also agree. According to Kelsen, when a practice is considered normal it is in a mode of *is*. On the other hand, when a practice is normative, it is in the mode of *ought*. He argues that an *ought* cannot logically follow from an *is*.

(vi) Legitimacy and legitimation

Norms imply legitimacy, quite often indistinguishably. As Ian Hurd (1999: 381) notes, legitimacy is “the actor’s perception” that a rule ought to be obeyed. Though conceptually this definition seems quite similar to the

definitions of norms, they are not one and the same concepts. Legitimacy characterizes norms, and is not conceptually same. Legitimacy can be defined as the parameter of authority. As a concept, it provides or demarcates the limits of what is and is not considered authoritative. Zelditch (2001: 33) claims, "...something is legitimate if it is in accord with the norms, values, beliefs, practices and procedures accepted by a group." This almost makes legitimacy and norms a natural phenomenon.

Here it may be useful to turn to Weber (1956, 1964) and other sociological and psychological explanations of legitimacy as parameters of authority. The legitimacy of norms is insignificant if they are not considered so; implying that the parameters of authority evolve from the beliefs, values, attitudes and degrees of obligation of people. So, legitimacy is not conceptually the same as obligation or value though they are linked.

As Weber explains, the most stable and valid (*Geltung*) order is one that "enjoys the prestige of being considered binding, or, as it may be expressed, of "legitimacy"." Here the parameters of authority are conferred by people through compliance, conformity, and reproduction through practice. Legitimacy is not to be considered a fixed characteristic of norms. The parameters of authority can change, fluctuate or cease altogether depending on individual, social, economic and political – local and global – environments. The process of establishing and re-establishing legitimacy is referred to as legitimation that is continuous and evolving.

There are also times when legitimacy stems from authority and/or by self or individual. "Central to the idea of legitimacy is the belief that some decision made or rule created by...authorities is valid in the sense that it is entitled to be obeyed by virtue of who made the decision or how it was made." This explanation by Tyler (2006: 377) refers to the notion of legitimacy by authority when people feel obliged to act in a certain or specific way

because they have been asked to do so by someone considered to hold a role of authority in their social space – parents, teachers, religious or political leaders, friends, employers and so on. Kelman and Hamilton (1989) call this “authorization”.

This also means that an individual’s own social identity is created and reiterated when conforming to or applying norms as discussed above. This social identity provides the authority to make decisions and take actions that are considered normative. It also means that legitimacy enables authorities and individuals to approve and disapprove of human social behaviour by applying sanctions – an important characteristic of norms.

(vii) Sanctions for non-conformity

Adeimantus pointed out to Socrates that though being just is universal and honourable, it is not legally binding as is being unjust. Additionally, being unjust is punishable, or at the least admonishable; but being just is an end in itself. And since there is no reward for just behaviour, Adeimantus was implying that it might be easier to seem just and behave unjustly so long as there are no legal repercussions (Plato 1894, 2000).

But a person or state could face more than just legal sanctions when not conforming to social imperatives. Additionally, signs of approval could also be demonstrated for conformity. The “sanctioning of modes of social conduct” (Giddens 1984: 18) includes both measures of approval and disapproval. In fact, sociologist Homans (1951: 123) goes to the extent to define a norm as a “sanction pattern” because norms stipulate behaviour that is acceptable and unacceptable. Sanctions on Iraq for the use of chemical weapons come to mind here; this instance will be explored in some depth in the case study on the Chemical Weapons Convention.

This essential element of sanctions raises a contentious and much-debated problematic of all norms being laws, and the legality of norms. While some debates have deliberated the efficacy of legal norms and whether legality of norms matter to their coherence or adherence, other debates delve on the need for the distinction between legal and non-legal norms. Not all norms are laws, in that they are not legally binding.

Finnemore (2000) questions this very issue when she asks ‘are legal norms distinctive?’ She argues in the article of the same title that there is nothing in the legal literature to indicate that norms with legal backing are in any way more effective than those without, which she refers to as soft law in line with references in legal literature. Finnemore used Thomas Franck’s legitimacy framework on pull factors of norms to make her case. Factors of determinacy, symbolic validation, coherence and adherence were the benchmarks for rule legitimacy (Franck 1990). Finnemore’s argument states that none of these factors are unique to legal norms. “There is nothing specific to legal norms in any of these characteristics. Thus, non-legal norms seem to exert power for the same reasons and in the same ways as soft laws.” She reiterates that, “What distinguishes legal norms from other norms is simply not clear” in their effectiveness or influence they exert (Finnemore 2000: 703). This present thesis will demonstrate through the case studies in later chapters that legality is not a determining factor, at least in the development and cascading of norms.

Kenneth Abbott, Robert Keohane, Andrew Moravcsik, Anne-Marie Slaughter and Duncan Snidal (2000) also stop short of creating a distinguishing line between international norms and international law in their conception of legalization. They place the two concepts along a continuum, also indicating that the effectiveness of legal norm is uncertain and yet to be established. Based on the defining components – obligation, precision and delegation – the authors explore and understand legalization as a process of

institutionalization, thereby introducing a temporal dimension to legality in the international system and also accepting international norms as powerful, if not equally, as international law.

Kratochwil (1984: 345) indicates that laws have three unique qualities. He argues, “law is best understood as a special type of rules guiding conduct, rather than a set of commands. Secondly, there is a distinction between the narrow conception of law as applied by impartial third parties and the wider context in which rules are used, invoked and utilized. The third point concerns the importance of legal rules for the performance of duties. Law, therefore, is not simply a “constraint,” but it also functions to orchestrate and thereby facilitate societal interaction.” But he concludes that these unique features do not mean that legal norms are more effective than moral norms. His inference also indicates that explaining international relations only through legal norms does not make it any more scientific than addressing norms in general. Therefore too, sanctions are not limited to legally binding norms.

Apart from legal sanctions, there are social and value sanctions. Legal sanctions are formal or formalized modes of punishment for not conforming to the normative order. In addition to legal sanctions, people have to face social and value sanctions when they do not adhere to norms. And in some instances, even if legal sanctions are not meted out a person might still have to face social and value sanctions. Social sanctions are momentary modes of expressing approval and disapproval. This could include gestures or reactions of approval or disapproval.

Meanwhile value sanctions are judgments of approval or disapproval that may last longer than the period of the social interaction. This could include isolation, or ostracization, perhaps even after a legal sanction. Unlike legal sanctions, enforcement of social and value sanctions does not require a

formal authority. Social and values sanctions can be applied and enforced by members of a social group. Apart from these descriptive differences, there is nothing to say that legal sanctions are more effective than social or values sanctions. Together with being a social imperative that is enveloped in the pressure of obligation, and lined with expressions of values, the added possibility of sanctions – legal or otherwise – can compel people to adhere to norms and enable an environment in which social and normative order can be maintained.

2.2.3. Norm Typologies

Norms have also been understood by what action or behavior they can enable by distinguishing them into types. One of the most common distinctions is between “regulative norms, which order and constrain behaviour, and constitutive norms, which create new actors, interests and categories of actions” (Finnemore and Sikkink 1998: 891). Regulative norms are often seen as constraining; though they could be understood as limiting the means through agents can act.

Ruggie (1998) gives a more detailed analysis of the difference between regulative and constitutive rules. Drawing on Rawl’s (1955) distinction between justification of a practice and justification of a particular action, he claims that regulative rules or norms are intended to have causal effects whereas constitutive norms “define the set of practices that make up a particular class of consciously organized social activity – that is to say, they specify what counts as that activity” (Ruggie 1998: 871). However this does not mean that constitutive rules can be reduced to the parts that make up its constitutive nature. The individual parts will not have value or meaning apart from the whole.

Further categorization into evaluative and prescriptive norms are not given due importance in the observation of Finnemore and Sikkink (1998) though

it is their specific oughtness in prescriptive norms that distinguishes it from other kinds of rules. Legal scholars, such as Hans Kelsen, segregate norms into individual and general. The former would involve a one-time individually specified obligation while the latter would be a norm that “decrees some generally specified behaviour to be obligatory” (Kelsen 1991: 7).

Kelsen created a further sub-classification of the general norms into primary and secondary norms. While the primary norm creates or stipulates the obligatory behaviour, the secondary norm prescribes a sanction for the violation of the primary norm. There is no hierarchy or stratification that Kelsen was trying to create. In fact, he was clear that primary and secondary norms can be individually expressly formulated and that only legal norms necessarily required secondary norms.

Geertz and Diehl (1992) classified norms based on their characteristic formation. Norms that correspond to self-interest, thus requiring no sanctions with minimal deontological component is termed the cooperative norm. It is, therefore, in the best interests of all actors involved to adhere and comply by the norms. Hegemonic norms differ by their partial conflict with self-interest, sanctioning power in the hands of a powerful actor and minimal support from affected actors.

This resonates with the normative structure of the United Nations (UN) where norms do not always match with the self-interests of state actors who may or may not always support the organization of the UN and the values it represents and sanctioning power is bestowed in the hands of five powerful actors comprised in the Security Council of the UN. Yet the UN is not a centralized authority and since the five veto-wielding nations can differ in their decisions to impose sanctions or not in any given situation, Geertz’s and Diehl’s third norm type is more in line with other constructivist characterization of norms. Decentralized norms are always in conflict with

self-interest, with diffused sanctioning power, meaning that sanctions are dependent on the willingness of individual state actors, and the deontological element is crucial.

One of the early pioneers, Kratochwil's (1984), classification is broadly categorised as instruction-type, practice-type and precepts. Along similar lines was the classification by Onuf (1998). Based on the degree of functionality, Onuf classified rules, as he called norms, instruction-rules, directive-rules and commitment-rules. Instruction-rules provided agents with information on what they should do in a particular situation based on their relation to the world. Directive-rules are different in that they are more emphatic, clearly stipulating the penalties for disregarding the norms. Commitment-rules are formed once actors or agents involved or prospectively wants to be involved in a relationship makes promises thereby creating webs of promises creating rights and duties.

However, the most commonly used classification is that of regulative and constitutive norms. There is a debate as to whether norms can be both types at once. Some like Raymond (1997: 214-215) see a sharp distinction between the regulative and constitutive norms and in international relations it is the regulative norms that matter more. Because norms are quasi-authoritative guides that display an image of the state system by their capacity to, firstly, "delineate borders", secondly, "serve as signposts or heuristic mental aids to warn policymakers of the prearranged actions that various states will take under certain circumstances", and thirdly, "like standard operating procedures, norms routinize many facets of transnational relations."

On the other hand, scholars such as Onuf, Wendt and Giddens argue that norms are at the same time constitutive and regulative. Giddens (1979: 66) claims that, "all social rules have both constitutive and regulative

(sanctioning) aspects to them.” Though Onuf (1998: 68) believes that the simultaneous constitutive and regulative nature of norms can be a source of confusion, he argues, “from a constructivist point of view, all rules are always constitutive and regulative.” Onuf contends that following a particular norm means that that norm can be strengthened or weakened thereby also constituting the norm and the practice of the norm, thereby making it both constitutive and regulative. Wendt (1999: 165) also believes that a sharp distinction between constitutive and regulative norms can be “a problematic assumption.”

Taking the analogy of a master-slave relationship, Wendt stipulates that the norm that constitutes the identity of the slave based on the relationship with the master also regulates his/her behaviour. Wendt, like Onuf and Giddens, believes that norms can have various levels of constitutiveness and regulativeness. But, they should determine the kinds of action or practice patterns, and not the kind of norm. Most often they are multi-functional – they serve to define the boundaries of collectively accepted behaviour and expectation thereby identifying actors with common identities defined by the shared understanding.

At the same time, norms can enable actors to accept and be accepted into a collective by adhering to shared understandings and practices. This means that norms can be enabling, regulative and constitutive based on the context. The context cannot be determined by the functionality of the norm whereas a particular context can determine the nature and function of a norm. It is difficult to determine a strict typology of norms based on their functionality. A fluid characterization is also preferable, as it lends to the complex and dynamic nature of norms, their development and continuity over time.

2.3. Tenets of Constructivism in International Studies

With the clear view of the centrality of norms in constructivism, and based on the review above of the development of understandings and debates about norms, this section examines the principles that are foundational to the theoretical framework within which this thesis research is broadly located. These tenets are the basis on which constructivists, of all degrees and types, understand and argue the construction of social knowledge in the context of international studies: (i) anarchy is a condition of international relations that is determined by the actions of states (ii) state identities and relations in international society are determined by shared understandings (iii) shared understanding or meaning is constructed intersubjectively (iv) agent and structure is mutually constituted and (v) change is possible. Each of the tenets has one element in common – norms or social facts. Following a brief discussion of the tenets, this chapter delves into the nature and characteristics of norms.

(i) Of the Condition of Anarchy

Anarchy, a defining feature of international relations, has also been a guiding factor in mainstream theories. The lack of such a supra-authority leads to an eternal situation of competition and conflict or anarchy – a self-help system that lacks a sense of collective security – is the claim. Constructivists refute this realist assumption. Anarchy is not predetermined, as realists would have one believe. The absence of a supreme authority over all sovereign states does not necessarily imply a constant state of competition for power. Constructivists claim that anarchy is a condition of international relations that is determined by the actions of states.

Contradicting realist claims, constructivists argue that a pre-given interest in survival is not induced simply by the condition of anarchy, and so power competition, security dilemmas, and war are not inevitable features of it. Unlike the dominant positivist theories of international relations, constructivists do not believe that the state of anarchy never changes. This

is not to say that they do not believe that the state of international relations is not intrinsically or necessarily anarchical. International relations are anarchical but it is not merely material but also ideational – determined by the actions and interactions of states, also called practice.

To use a very common example, the United States may not be threatened by a British build-up of nuclear arms, as they have a friendly relationship. However, the United States would be threatened by a nuclear arms build-up by North Korea because of their standoffish relationship (Wendt 1995). The example is also limiting in that it defines their relationship based on one understanding, in this case an arms race. And though the US may not be bilaterally concerned about a British weapons build-up, it will become a matter of international unease because of the particular breach of accepted collective practice and understandings.

(ii) Shared Understandings determine State Identities and Relations in International Society

The community of states is built on shared meanings, common understanding, accepted practices and expected behaviour. This ascribing of meaning to the material world also defines state identities, interactions and relations between and amongst states internationally. Wendt (1994) stipulates that two types of identities are constructed – individual and collective or the corporate and the social. The corporate identity is comprised by the nature and qualities that make the actor individualistic. Social identities “are sets of meanings that an actor attributes to itself while taking the perspective of others, that is, as a social object” (Wendt 1994: 385).

The shared understandings are a complex web of normative structures that guide states in their interactions. Over time identities and interests create social institutions and social practices between members of particular

identities and interests, in turn reinforcing the social institutions. Social knowledge as it is collectively constructed and collectively accepted do change over time as institutions and practices are influenced by the prevailing social contexts, dynamics of a specific time-period, history and other social, cultural, economic and political forces.

(iii) Intersubjectivity in International Society

The collective and shared nature of social reality and knowledge – of states and structures – are ontologically significant in the constructivist framework (Adler 1997). Intersubjectivity can be understood in two layers. One is the individual layer that helps an actor form idea, beliefs, and interests. However, this individual layer is linked to the collective layer that helps form or transforms these ideas, beliefs and interests. As Searle (1995: 25) describes, when doing something together, “the individual intentionality that each person has is derived from the collective intentionality that they share.” The outcome is a construct of collective meaning,¹⁰ agreed upon actions and interactions that are meaningful to all actors involved. Therefore actions and interactions are not only an act of self-help, but also knowledge-based practices.

Acts, practices and knowledge in international relations are also collectively constructed meanings that enable normative behavior and social coexistence. The intersubjectivity is also manifested in state identities and their place in the global community.

(iv) Mutual Constitution of Agent and Structure in International Studies

¹⁰ Even Adam Smith (Coase 1976) spoke of collective meaning in his theory *Of Moral Sentiments*, “Our continual observations upon the conduct of others insensibly leads us to form to ourselves certain general rules concerning what is fit and proper either to be done or to be avoided. These general rules of conduct are of great importance. They represent the only principle by which the bulk of mankind are capable of directing their actions...”

In the aforementioned tenets, the interlinked nature of the construct of the identities of the state or agent and structures was evident. The blurry distinction between the material and social also allows a layered understanding of reality without granting primacy to either material or social but to see people and society as mutually constitutive (Onuf 1989). The inference here is that society and people make each other in an ongoing, two-way process (Zehfuss 2002).

Agents are individual actors irrespective of the structure in which they may or may not come to identify with. States in international society are the actors. And structures are systems that cannot be reduced to the agents that socialize in it. The intersubjective practices and collective knowledge are the structures that construct the international system. Structures exist over time and not only in momentary agents. This tenet of constructivism also created an unresolved conundrum of the primacy of agent and structure. Though this debate ¹¹ continues, constructivist theories, deliberated in the next chapter, are clearly agent-centric and agent driven.

(v) Change is Possible

Though constructivism refutes the pre-determined nature of international relations, the predictability of shared understandings and accepted behaviour purports a sense of what it is and how it operates. This indicates

¹¹ Onuf (1998) avoided this debate by suggesting that the word structure is the source of the confusion, recommending that the word be replaced with social arrangement. Wendt was the first to confront the problem in-depth in 1987, using Bhaskar's scientific realism and borrowing from Giddens' structuration theory. In Wendt's (1987) argument, structures are real inasmuch as they generate effects through agents' actions, which in turn generates, rather regenerates the structures. Much along the same lines was Dessler's (1989) debate on the agent-structure issue. His only criticism of Giddens, Wendt and Bhaskar was that they all provided possible solutions to the agent-structure issue but at a philosophical level that does not explicate the practical approach. The debate turned critical after Hollis and Smith's 1990 book and Wendt's criticism of it in 1991. Wendt (1991) was unhappy about Hollis and Smith's attempt to conflate the levels of analysis problem with the agent-structure problem. Giving the debate a fresh view was Carlsnaes (1992) with Margaret Archer's theory of morphogenesis and its analytical duality.

order, but also the possibility of change. Constructivism does not predict patterns of change but understands that a concrete normative framework of shared meaning and understanding has the potential to effect change. Studying how change comes about is significant in the constructivist research programme.

According to Adler (1997) if shared understandings are what build relationships, then change can be made possible through effecting change in the understandings, and not, for instance, by getting rid of the nuclear weapons of either the US and North Korea or both as would be the causal explanation. Change is also significant in the constructivist understanding of power that states can learn to want things other than power; that relations between states do not always have to be competitive. However, as Finnemore and Sikkink (1998) claim, understanding change is as hard for constructivists as it is for realists.

2.4. Conclusion

Understanding change is as important in constructivism as studying the order of a constructed reality, if not more. It is this research's aim to examine both theoretically anew with empirically grounding. To do this, first this research studies existing constructivist theories of international norms, and their challenges in the next chapter.

This chapter has laid out the fundamental theoretical pillars, and examined the basic nature and foundations of constructivism and its most important ingredient – norms. It has demonstrated that the core of constructivism lies in understanding norms. The tenets and the debates around them also signify the centrality of norms. Though norms seem normal, an almost natural phenomenon, this chapter has denaturalized it ontologically as a construct of social reality by examining its characteristics, scope and typologies.

Constructivists also confer due importance, if not equal, to the material structures of social reality. In this ontologically physical reality that is socially emergent, constructivists also accept that identities, interests and behaviour of political agents are socially constructed by collective meaning, interpretations and assumptions about the world (Adler 1991). It has been shown in this chapter that constructivism explains and explores the world beyond its visible, observable material resources and capacities. It is to move away from a causal explanation of the world determined by materialistic agents driven to act and meet their self-interests, and to understand how the world is constructed, known, has evolved and changed.

CHAPTER 3.

EXAMINING THE LIFE CYCLE OF INTERNATIONAL NORMS

“One important task for future research will be to define more specifically the conditions under which certain kinds of norms might prevail or fail in influencing action. A related task will be to clarify the mechanisms whereby norms are created, changed and exercise their influence.”

Martha Finnemore (1996: 185)

The previous chapter reviewed the understandings, centrality and instrumentality of norms in the constructivist international relations paradigm. Constructivism takes forward the normative perspective, and aims to provide a theoretical understanding of international relations through the construction, development and diffusion of social knowledge and social practices. There are several constructivist models of norm development and spread in international relations. Perhaps the most widely referred to and used being, Finnemore and Sikkink's (1998) life cycle framework. In this chapter, we examine this framework and what it reveals, and most importantly what it does not. The chapter will lead to the hypothesis that:

Constructivist accounts of how norms spread and develop are deficient in terms of the mechanisms by which these processes occur. Norm cascading is more dynamic and multi-dimensional. Norms extend their reach and reinforce their power and legitimacy through replication and particularization before state acceptance and adherence, and do not merely cascade through state acceptance and adherence.

The theoretical deficiency leads to the need to understand norm cascading as a more dynamic and multi-dimensional construct. In the following chapter, a revised and enhanced framework is developed to take into account and demonstrate how norms can be examined and studied in a

more dynamic way. The classic life cycle framework lays out straightforward stages to the life of a norm. It starts with the origin of ideas in the international system – norm emergence. Then moves on to collective acceptance of common meaning, which may have come about cooperatively or competitively, thereby cascading the norm. This eventually leads to the normalization of practice – internalization.

3.1. International Norms Emerge and Develop: A Life Cycle Begins

The most widely used constructivist IR theories of international norms concentrate on how and why states obey norms (Finnemore 1993; Franck 1990; Katzenstein 1996; Alvarez 1997), or how norms impact on states' domestic policies and specific international responses (Risse, Ropp and Sikkink 1999; Wheeler 2000), or how international relations progress (Adler and Crawford 1991), or when norms change or cause change (Finnemore and Sikkink 1998; Florini 1996 and others). However, we argue that these theoretical frameworks, though useful, often provide a simplistic and incomplete picture.

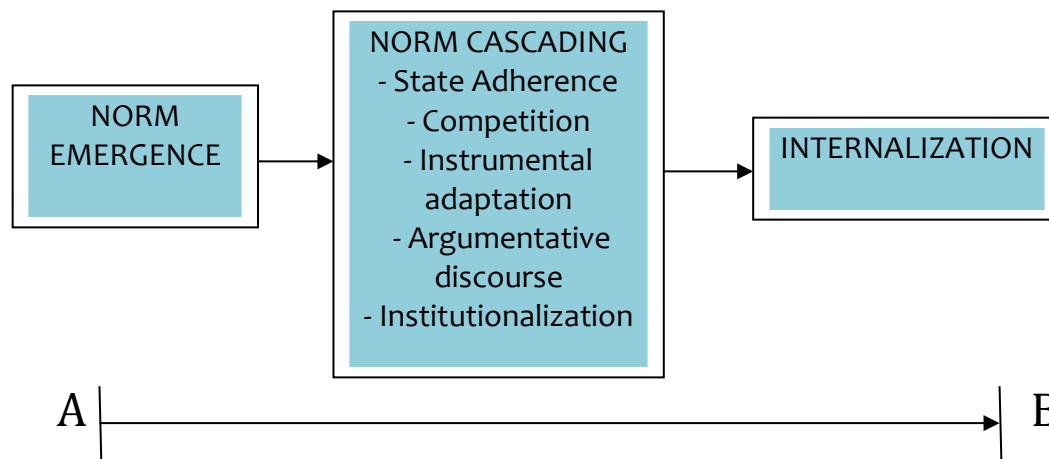


Figure 1: Stages of Classic Norm Life Cycle

A relatively thin conceptualization of norms with its agency-centric focus is also evident in the constructivist theories in International Studies. Such

Constructivist theories of norms develop a framing that international standards of accepted behaviour among sovereign states constituent of an international society become collectively shared over a “life cycle of a norm” (Finnemore and Sikkink 1998) or sometimes through a “spiral model” (Risse, Ropp and Sikkink 1999) or through “cognitive evolution” (Adler 1991).

These models are linear not taking the complexity and dynamism of norm formation and the mutual constitution of agency and structure into consideration. To be able to tackle the complexity of norm formation and development, we first need to understand the existing norm models in some depth. Finnemore and Sikkink’s (1998) life cycle model and Risse and Sikkink’s (1999) spiral model are similar, though Risse and Sikkink have developed a five-stage model instead of three by elaborating some of the stages further. Irrespective of the number of stages, the primary development phases attributed to the life of a norm are: norm emergence, norm cascading and internalization.

This model indicates that there is a clear beginning and an end to the process. Norm emergence is the stage where norm entrepreneurs advocate the norms. Kowert and Legro (1996) theorize on the origins of norms that is broadly accepted by Finnemore and Sikkink in their life-cycle model. The processes that generate, maintain and change norms are ecological, social and internal. Ecological processes are determined by the interactions between actors and their environments, while social processes involve the interaction between actors – humans, states, organizations and other political agents – and internal processes are those, which occur within the actors and refer mostly to psychological dynamics.

3.2. Norm Emergence: The Beginning

Norm entrepreneurs are taken to be crucial agents in the first stage of the norm development. They are seen as “agents having strong notions about

appropriate or desirable behaviour in their community” (Finnemore and Sikkink 1998: 896). Though Finnemore and Sikkink do not go into the factors that give rise to the emergence of norms, their model depends heavily on the innovative and creative values and skills of the norm entrepreneur.

In creating a normative framework, Finnemore and Sikkink claim that entrepreneurs take on the role of framing – a concept borrowed from the social movements literature by David Snow et al (1986). Snow et al credit Erving Goffman (1974) for the concept of framing. It denotes “schemata of interpretation” that enable individuals “to locate, perceive, identify, and label” occurrences within their life space and the world at large. By rendering events or occurrences meaningful, frames function to organize experience and guide action, whether individual or collective” (1986: 464).

The role of the norm entrepreneur is similar to the concept of framing where they “name, interpret, and dramatize” the issue thereby calling attention to it (Finnemore and Sikkink 1998: 897). Calling attention to an issue is not an easy task for the norm entrepreneurs. They inevitably encounter existing standards of behaviour and have to tackle them. The life-cycle model stipulates that norm entrepreneurs sometimes have to be explicitly inappropriate to take on accepted standards of appropriateness. “Deliberately inappropriate acts (such as organized civil disobedience), especially those entailing social ostracism or legal punishment, can be powerful tools for norm entrepreneurs seeking to send a message and frame an issue” (Finnemore and Sikkink 1998: 897). It is clear here that the model is based on the assumption that the norm is entirely new and always in conflict with existing norms – we will argue later that this is not typically the case in relation to international norms.

Crucial to the role and existence of a norm entrepreneur is a platform, primarily in the form of an organization from which to host their creation. It is also the case that, at times, platforms are specifically created for the norm entrepreneur. But mostly, existing organizations with broad mandates and agendas are able to house a norm entrepreneur thereby providing the necessary impetus to promote the norm in question. The organization's – non-governmental, multilateral and others – institutional framework and experience in the international system gives the entrepreneur the much-needed credibility to be able to influence normative change (Finnemore and Sikkink 1998).

In addition to organizational credibility, the organization's networks of information, knowledge and influence can enable shifts in the behaviour of actors (Finnemore and Sikkink 1998). From the perspective of this framework for understanding, it is the power of the agency of the entrepreneur or the organization that influences change in the model, limiting it, again, to a one-dimensional view of the change and the power of norms in international relations.

Emanuel Adler's cognitive evolution is also centered on the power of the agent. Cognitive evolution begins when new expectations and values are created; this is the stage of innovation. The innovation stage is similar to norm emergence in the life-cycle model. "Innovation occurs when new meanings and interpretations are generated by individuals within institutional structures" (Adler 1991: 56) Selection is the second stage where expectations and values are chosen through various structures and processes by actors within domestic institutions. The principle actor here is the policy-maker who assumes the role of a norm entrepreneur. This is the stage at which other actors in the domestic political system are persuaded to accept the new, thereby making it legitimate.

Similarly, the first two stages of the 5-stage spiral-socializing model (Risse, Ropp and Sikkink 1999) also focus on the agent. But the norm is not new in this case; it is the non-adhering state that is new and this 'target state' is being socialized into accepting a collective identity. The first two stages involve a state of repression and denial on the part of the sovereign, which then leads to tactical concessions on the part of the State due to pressures from local, regional and transnational advocacy groups. The spiral model begins at the stage where the "target state" is repressive enough to de-capacitate any domestic societal opposition. This means that it would require transnational advocacy groups to put the violations of the target state on the international agenda and this can only be done "if and when the transnational advocacy network succeeds in gathering sufficient information on the repression in the target state" (Risse, Ropp and Sikkink 1999: 22). Once a target state has been spotlighted in the international agenda, transnational advocacy network can lobby international human rights organizations and other norm-abiding states thus reminding them of their identity and duty. Here the transnational advocacy groups assume the role of norm entrepreneurs not as the developer of the norm but as the advocate of an existing norm.

3.3. Norm Cascading: The Tipping Threshold

Within this relatively dominant existing constructivist framework, once the entrepreneur(s) has garnered the support of a critical mass of states to accept the new norm, the second stage of cascading is set in motion where emulation is the dynamic that is visible. This "tipping point" is quantified approximately by Finnemore and Sikkink (1998: 901) at "one-third of the total states in the system" adopting the norm. According to Finnemore and Sikkink, the tipping threshold is not only driven by the norm entrepreneur and a well-rooted organizational platform, but also by the institutionalization of the norm in specific sets of international rules. This is not a necessary condition or one that specifically precedes norm cascading.

Another key factor identified in this framework that can drive norm cascades is a state that adopts the norm. In certain cases, it may be important that a “critical state” adhere to the norm thereby giving it credibility. With different norms, different states would be critical. Following the “tipping point”, countries begin to adopt the new norm in quicker succession than during the tipping threshold. The cascading is driven by international socialization of identities that is partly constituted by the social structures in the international system that have emerged out of the shared understandings and collective knowledge of the actors. Finnemore, Sikkink and their associates identify socialization processes as mechanisms used to persuade states to adopt and adhere to norms. These include peer pressure, legitimation, conformity and esteem (Finnemore and Sikkink 1998).

Meanwhile Risse, Ropp and Sikkink (1999) explore the processes of norm socialization a little further in their spiral model. Socialization is a concept the authors have borrowed from Barnes, Carter and Skidmore (1980). It elaborates on the concept of norm cascading, but from within the point of view of state adherence and practice of norms. The model elaborates on three mechanisms of socialization – not mutually exclusive – that are then build into an operational framework to explain the cascading of human rights norms in the international system. The three socialization mechanisms are namely: instrumental adaptation, argumentative discourse and institutionalization. Thus the spiral model is based on the mode of social interaction that is dominant in each phase. Developers of the spiral model claim that the first reaction of the target state is always to deny any and all violations, which indicates that the socialization process has begun – the second stage of the model. The opening up of a space for dialogue through the socialization process helps to build international pressure. This drives the target state to make cosmetic concessions – as the third stage of the model – thereby also enabling domestic societal networks to rejuvenate

themselves against their state's violations and non-compliances and engage in an argument with the government. Therefore in the first couple of stages, the processes of socialization rely on instrumental adaptation, which then moves to argumentative discourse and then institutionalization in the later and last phases.

Risse, Ropp and Sikkink (1999) reiterate that the second stage of lobbying and international mobilization is not only about forcing the target state into a corner but also opening engagement spaces for domestic networks in the target state. The authors caution that this stage can push the socialization process forward or cause a backlash depending on the reaction of the target state. If the target government does not backlash, then the "pressure from above" through transnational advocacy networks and peer pressure together with "pressure from below" through domestic mobilization lead to "prescriptive status". It is from this prescriptive status that states adhere to norms in a consistent manner. Consistent conformity can be guaranteed, according to Risse, Ropp and Sikkink, through constant pressure from domestic, national and international networks. In understanding the development and diffusion of norms, constructivists limit their exploration to the impact of agents whether through adherence or emulation.

3.3.1. Unpacking the Construct of Norm Cascading

Though Finnemore and Sikkink lay out the groundwork for understanding norm cascading, they do not go beyond a quantitative agent-centric and agent-driven acceptance of norms. In our review of the constructivist and associated literature in this area, we can broadly extract and unpack norm cascading as being conceived as being driven by the following three factors: (i) Gain meaning and reach (ii) Create power (iii) Establish legitimacy.

(i) Gain meaning and reach

The reach of an international norm is typically determined within this framework by the number of states that have accepted or endorsed it – one-third of the member states of the international community, as prescribed by Finnemore and Sikkink (1998). However, the number of states that accept and adhere to the norm is not the only defining factor of norm cascading. It takes more than politicking and strategic lobbying on the part of the norm entrepreneur, interested governments and non-governmental organizations to gain the acceptance and adherence of states. Reach is also achieved through the meaning prescribed to a norm, and through that which emanates from the norm.

Constructivist theorists understand this framing to be an important tool of persuasion for norm entrepreneurs. As Finnemore and Sikkink (1998: 914) state, “It is the mission of norm entrepreneurs: they seek to change the utility functions of other players to reflect some new normative commitment. Persuasion is the process by which agent action becomes social structure, ideas become norms, and the subjective becomes the intersubjective.”

A frame – as a tool and a process – is not only a means of persuasion; it is used to “fix meanings, organize experience, alert others that their interests and possibly their identities are at stake, and propose solutions to ongoing problems.” This characterization of frame and framing by Michael Barnett (1999: 25) can be seen as a good starting point to understand the creation of meaning in the development of norms. For this school of constructivists, the affixing of meaning is the doorway to norm cascading. The creation or attachment of meaning can then be used as a tool of persuasion by norm entrepreneurs and their teams or norm partners, enabling norm cascading, as these constructivist models indicate.

However, the creation of meaning involves more than being a force of persuasion. It is a process of marking international history with a line that

demarcates good from bad, acceptable from unacceptable and right and wrong, not only in value but also in practice. It is also the process of making a concept understandable and meaningful through the words and language used to describe the concept.

Language is a determining factor in the creation of meaning. Though rooted in the moment of creation, language transcends spatial and temporal dimensions, as Berger and Luckmann (1996: 37-38) explain: “Language has its origins in the face-to-face situation, but can be readily detached from it...The detachment of language lies much more basically in its capacity to communicate meanings that are direct expressions of subjectivity ‘here and now’.” This also means that language is a bridge between “different zones within the reality of everyday life and integrates them into a meaningful whole across spatial, temporal and social dimensions.”

This is also true within the international sphere. The creation of meaning in a moment in time and space transcends that spatial, temporal and social dimension. Onuf (2013: 40), one of the constructivist pioneers, calls this naming of concepts “metaphors” and according to him, “metaphors are concepts in the making.” Onuf’s understanding can be read as framing as well.

For instance, the coining of the term genocide by international jurist, legal scholar and a polish refugee Raphael Lemkin is a good example of the use and process of framing and affixing meaning to a concept that until 1944 was unheard of. He brought together Greek – *geno* meaning race – and Latin – *cide* meaning killing – to coin the word genocide.¹² It is not just about coining a word or a phrase, but more importantly It is about defining it, giving it boundaries – a definition not only decides what can be constructed to

¹² UNHCR, A short biography of Lemkin, <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3b7255121c&query=genocide%20convention>, accessed on 9 January 2015

constitute a particular concept, but also what cannot. Herein lies the construction of social reality *a la* Berger and Luckmann (1996: 34).

“Human expressivity is capable of objectivation, that is, it manifests itself in products of human activity that are available to both their producers and to other men as elements of a common world. Such objectivations serve as more or less enduring indices of the subjective processes of their producers, allowing their availability to extend beyond the face-to-face situation in which they can be directly apprehended.”

Framing is the objectivation of meaning. It involves the removal of the here and now from a construct so that it can be used across space and time. This draws states to accept and adhere to the norm, creating normative reach, according to the prevailing constructivist framework. There are various means available to states and non-governmental actors to socialize states to accept and adhere to norms. It is in the phase of acceptance and adherence that this school of constructivists flags the stage and beginning of norm cascading. This is also the point of creation of power and legitimacy in the life of a norm.

(ii) Create Power

Scholars have long studied the concept of power, between people, communities, and states. It has become one of the most frequently used and debated concepts across disciplines – in political, social and international theories and more. The frequency of its use in the international context and international analyses – balance of power, superpower, great powers, power vacuum – reiterates this significance (Rothgeb Jr. 1993).

Although power has long been a key concept, it remains complex and contested. The roots of this complexity and contestations lie, primarily, in a

lack of conceptual and analytical agreement on a singular understanding. Phrases such as ‘the power of ideas,’ ‘the power of human rights,’ ‘the power of deterrence,’ and more leads one to assume the almost natural and inevitable force of what we know and understand as ideas, human rights or deterrence without taking ‘power of’ as problematiqué. It is not the intention of this thesis to enter deep reflection of the concept of power, but the discussion here will focus on how power is widely understood and used in this school of constructivist literature, and its relevance and relation to norm cascading. It is best to begin with the discipline of sociology where Weber’s elucidation sheds light on the complexity of power (using Parsons’ 1968 translation) with a simple definition.

“The probability within a social relationship of being able to secure one’s own ends even against opposition.”

As identified by Berenskoetter (2007: 3), Weber’s “definition is remarkably rich”. It highlights that power is a “relations phenomenon,” thereby indicating also that power is constructed within a social setting defined by the parameters and boundaries of a given social relationship in the moment that such a relationship came to be or in later instances that transcend social, temporal and spatial dimensions. By specifying probability, Weber not only suggests that the opportunity or potential does not have to be realized, but also that power over does not always signify absolute domination.

This leads to another important feature about power highlighted in Weber’s definition – that of resistance. “...the qualification that meeting and overcoming resistance is not a necessary feature can be interpreted that power means accomplishing one’s will not only against but also with others...Weber also allows for the notion of empowerment, or ‘power to’, and leaves open the possibility that a power relationship is not necessarily

hierarchical, as implied in the notion of ‘power over’” (Berenskoetter 2007: 3).

Weber’s definition has not only been a starting point to understanding power in sociology but also across other disciplines, especially in international relations that was dominated by the operationalization of power in term of resources but “when people define power as synonymous with the resources that produce it, they sometimes encounter the paradox that those best endowed with power do not always get the outcomes they want” (Nye Jr. 2004: 3).

There is definitely more explanatory and exploratory potential in seeing the phenomenon of power as constructed and not natural as Parsons rightly conceptualized, which is foundational to any constructivist understanding of power (Haugaard 2002). And the concept of power and its understanding is a particularly essential and crucial element in understanding norm cascading. Having gained in reach, the power of a norm is constructed by recognition of the norm and its acceptance by state actors, and especially by state adherence, where the norm is reproduced through the right behaviour and conduct of states. Further institutionalization into the international system and domestication in respective national policies deepens the power of the norm. However contested Parsons’ theory on power may be, he sums it up best:

“Power then is the *generalised capacity* to secure the performance of binding obligations by units in a system of collective organization when the obligations are legitimized with reference to their bearing on *collective goals* and where in case of recalcitrance there is a *presumption of enforcement by negative situational sanctions* – whatever the actual agency of that enforcement” (Haugaard 2002: 78, emphasis added).

This capacity to influence and probability to secure one's own ends also comes with its growing list of names – taxonomy – though relational, does not commit to any hierarchy – such as hard power, soft power, relational power, meta-power, structural power, compulsory power, institutional power, productive power and more.¹³ It does not serve the purpose of this section of the thesis to delve into an in-depth discussion on the types and forms of power in international politics suffice to say that each type of power highlight similar defining characteristics.

Power is constructed in much the same way that social reality is constructed and reality is socially constructed – it is relational, embedded in international structures – material and non-material – and is the source of the capacity needed for member states to act towards a goal or even change the goal. Within the constructivist approach, therefore, and within the context of norm cascading and through the creation of a norm, power is the construction of the relational capacity that can be aimed – individually or collectively once the norm is accepted and adhered to – at legitimized collective obligations and goals.

This does not equate power and norm but indicates that, as Giddens (1984: 16) states, norms are “media through which power is exercised.” It is this understanding that justifies the constructivist use (and sometimes overuse) of the phrase ‘power of’ in demonstrating the strength or force of an

¹³ Hard power is the preserve of the realist school of international relations. Though the constructivists do not discount it, they do not look at power solely as materialistic, it is considered together with normative power. For instance, a constructivist understanding of the events that unfolded on what we know today as 9/11 could not be understood as only a failing of America's hard power or as a result of its excessive use of hard power that infringed on the hard power resources (territory) of other state and non-state actors. See Nye Jr. (1990, 2004) for soft power; Krasner (1985) for meta-power, Guzzini (1993), Barnett and Duval (2005) and others on structural power. Guzzini also elaborates further sub-taxonomies in his operationalization of structural power – indirect/institutional, non-intentional and impersonal. And see Barnett and Duval (2005) for explanations on other types of power in international politics.

international norm. However it is interesting to note that most non-realist approach towards power is specifically in understanding power as 'capacity' or 'probability' or 'ability' as opposed to seeing power as force. It is essentially because even if one were to approach power as a force, that one would remain wanting in taking that understanding of force to its outcome of being 'forceful'. A brief exploration of an example would shed more light on this distinction and on the concept of construction of power.

The 1951 Convention Relating to the Status of Refugees is one of the older international norms that would be a good example because: (i) It falls within the international human rights normative framework (ii) The norm of sovereignty is fundamental to this convention (iii) After the creation of the Universal Declaration of Human Rights, UN Charter and Geneva Conventions, it is perhaps one of the first international norms to directly deal with people at the international level, and not just states (iv) And unlike some of the international norms and laws that were established at the time, such as the 1948 Genocide Convention which also sought to protect people in violent conflicts directly, the Refugee Convention came with institutional backing in the form of the UNHCR – Office of the High Commissioner for Refugees. This meant that the Refugee Convention not only had the power of meaning but also a mandate to enforce, at least through negotiations, assistance and support to people and states alike.

In the aftermath of the Second World War, the massive influx of those forced to flee their countries as the allied and axis forces fatally locked horns became a cry for urgent help not only from the hundreds and thousands fleeing, but also from countries and their governments where people were fleeing to. The drafting of the Refugee Convention in 1949 did two things. Firstly, the convention defined the refugee.¹⁴ Secondly, it went beyond just

¹⁴ Article 1A (1, 2) of the 1951 *United Nations Convention Relating to the Status of Refugees*, 19 U.S.T. 6223, 189 U.N.T.S. 137.

addressing the issue of labelling people as refugees (granting status). The Convention provided the means and measures to support and protect the rights (social and economic) of refugees including the right not to be forcibly returned to the country of origin or non-refoulement (Bertrand 1993).¹⁵

In developing the convention through a conference of plenipotentiaries, accepting it, and establishing a UN institutional mechanism by 1951, power – conceptually and operationally – was created through identifying the refugees and ensuring their protection. In this case, power – the capacity and potential to act – was given not only to states party to the Refugee Convention to grant those fleeing persecution and violence with the status of refugee, which would in turn grant refugees the power to demand their rights from host countries.

The convention is also a medium of power for UNHCR to act as an intermediary between states and between states and those seeking refugee status. In the constructivist approach the critical mass of support from states to develop the convention, draft it, adopt and adhere to it is a reflection of the power of the norms of the Refugee Convention – the fact that a provision and capacity is available to states to address a situation of forced displacement is an indicator of power, and in turn of norm cascading.

The effectiveness of this power is a different matter altogether. It is a fact that over the years, since 1951, there are “more refugees but less asylum” (Roberts 1998) because first host countries and countries that are highest in refugee numbers have increasingly turned away refugees even before they get there, or rejected asylum claims even when they are legitimate. This has not weakened the convention’s normative standing because as discussed

¹⁵ The principle of non-refoulement is established in Article 33 of the *1951 United Nations Convention Relating to the Status of Refugees*, 19 U.S.T. 6223, 189 U.N.T.S. 137.

earlier it is also in violations and infractions that a norm becomes clearer, more persistent and more powerful.

(iii) Establish Legitimacy

It is hard to properly address power or legitimacy except in close inter-relationship with each other. “Legitimacy constrains power, but also enables it; power suffuses legitimacy, but does not empty it of normative content” (Clark 2005: 4). There are, obviously, areas of close inter-play or overlap conceptually, theoretically and operationally. For our purposes, it is important to examine how to employ them as relevant to norm cascading, and thus lay out the necessary groundwork as done with power above.

The conceptual and theoretical roots of legitimacy lie in sociology, political science, political theory, and its understanding of what legitimate authority or power is, means and how it operates. “Politics is not merely a struggle for power, but also a contest over legitimacy,” states Inis Claude Jr. (1996: 368), one of the most prominent scholars in the field of political legitimacy. In Claude’s conceptualization of legitimacy, it is a completion of the realization of power: “The urge for formally declared and generally acknowledged legitimacy approaches the status of a constant feature of political life. This urge requires that power be converted into authority, competence be supported by jurisdiction, and possession be validated by ownership” (Inis Claude Jr. 1996: 367).

Legitimacy is significant to understanding normative international relations. It sheds some light on the typically norm compliant behaviour of most states especially in the absence of any independent international enforcing authority. However, legitimacy is – like the concept of power – complex and contested. But as Thomas Franck (1990: 21) observes, “if one is ever to demonstrate the existence of the legitimacy factor in securing obedience to norms, the global *polis* is where that elusive factor may be found, isolated,

and studied by the social scientist...the international system is the only place where legitimacy may be observed “on the hoof”.”

Legal, political and international relations theorists who have addressed the concept of legitimacy have generally come to some similar definitional conclusions:

“Legitimacy...refers to an actor’s normative belief that a rule or institution ought to be obeyed. It is a subjective quality, relational between actor and institution, and is defined by the *actor’s perception* of the institution” (Hurd 2007: 7).

“Legitimacy is a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because *those addressed believe* that the rule or institution has come into being and operates in accordance with generally accepted principles of right process” (Franck 1990: 24).

“Legitimacy is defined as the governed recognizing the right of the governors to lead and, to a certain extent, their entitlement to the perks of power. It is a process through which both political power and obedience are justified” (Charlesworth, H. and Coicaud 2010: 17).

The core of these definitions is the perceptions of the actors, which is quite similar to Weber’s (1968) understanding that a rule is legitimate when its subjects believe it to be so. Zelditch Jr. (2001) employs the Weberian approach to formulate three theories of legitimacy – consensus, conflict and mixed theory. Parsons Consensus Theory that is similar to Aristotle’s *Politics* or Rousseau’s *The Social Contract* relies on consent to arrive at legitimacy. Though consent is a function of legitimacy, it is based on a

shared belief, between rulers and ruled, in norms and values (Zelditch Jr. 2001).

Machiavelli's conflict theory is based on pure power because the interests of the rulers and ruled are in conflict. Nevertheless, there has to be a justification for the use of pure power. This is where Machiavelli invokes the process of masking pure power in ideology, which would legitimate pure power over time or social order would collapse. The third 'mixed' proposition is drawn from Weber's 1918 speech on 'Politics as a Vocation' where he outlines some of his thoughts on legitimacy. His basic question was, "when and why do men obey?" However in answering his question, Weber focuses on the legitimate forms of dominance taking for granted the inherent legitimacy of his ideal-types (Blau 1963).

It is Weber's legitimacy of dominance that forms the core of the mixed theory of legitimacy where it is not just individual consent that is required but collective processes of validation.¹⁶ Only some like Franck (1990) assert that legitimacy is a defining characteristic of norms. Franck's indicative ingredients of legitimacy are: determinacy, symbolic validation, coherence and adherence.

Franck's formulation focuses on meaning, its logic and clarity and its execution that is symbolic and compliance with the rules itself. Meanwhile Clark (2005) stipulates a more dynamic approach to legitimacy as consisting of rightful membership and rightful conduct. He calls this the two faces of the practice of legitimacy and deems it essential that the dual aspects are studied for a complete understanding of the concept. Clark's view of legitimacy adds process(es) of legitimation together with actor's perception which are seen in the behaviour of the actors.

¹⁶ Also see Beetham (1991) on collective legitimization

The idea of perception is central to the Finnemore and Sikkink constructivist view on legitimacy. In their life cycle norm development framework, legitimacy is one of the motivations of norm cascading whereby states accept or follow norms as a sign of seeking approval from the international society together with reputation and esteem. Here there is loose use of the concept of legitimacy as it is conflated with process of legitimation. And international legitimacy and legitimation are linked to a government's domestic legitimacy, which also urges states in their capacity as international agents to adhere and comply with norms.

In a later article, Finnemore (2009: 61) conceptualizes legitimacy, as "by its nature [to be] a social and relational phenomenon. One's position in power cannot be legitimate in a vacuum. The concept only has meaning in a particular social context." In Florini's (1996: 365) evolutionary theory of norm development, legitimacy is integral to accepting norms as norms: "Norms are obeyed not because they are enforced, but because they are seen as legitimate." Legitimacy in the Finnemore constructivist framework is either a factor of adherence or a factor that creates or reinforces an actor's identity, which then stipulates that the actor has to accept, comply with and/or adhere to normative standards and behaviour to be or continued to be considered legitimate. Therefore in this constructivist framework, legitimacy is held by actors or states in the first instance.

It is conferred on other members of the collective who are intersubjectively recognized as legitimate or on their acts/behaviour – this means that norms (structures) are not directly legitimate or legitimated, because legitimacy is a motive to accept a norm and it is identity centric. When states behave or act in an appropriate and acceptable manner, they are perceived to be doing so legitimately.

For instance, the decision of Myanmar's Junta government to hold elections in 2010 was a legitimizing move to gain acceptance into the international community. But the lack of full compliance saw a barrage of rejections of the actions of Myanmar as illegitimate. A statement following the November 2010 elections from the Spokesperson of UN Secretary General, Ban Ki-Moon, said, "The voting was held in conditions that were insufficiently inclusive, participatory and transparent...Consistent with their commitments, the authorities must demonstrate that the ballot is part of a credible transition towards democratic government, national reconciliation and respect for human rights.

He also urges the Myanmar authorities to ensure that the process of forming new institutions of government is as broad-based and inclusive as possible, and calls for renewed dialogue among all stakeholders in this regard as part of any process of national reconciliation. The international community will look to the Myanmar authorities to provide greater assurances that the current process marks a genuine departure from the status quo. The Secretary General reaffirms the United Nations' commitment to work with the Government and people of Myanmar to help them achieve such a transformation."¹⁷

The United Nations and the international community denies Myanmar legitimacy because of the symbolic compliance to the norms of democratization that are defined by appropriate behaviour – in this case to – democratic government, national reconciliation and respect for human rights as noted by the UN Spokesperson. So appropriate behaviour through compliance with international norms by authorities in Myanmar would bring it legitimacy as an international actor, which the UN and the international

¹⁷ Statement attributable to the Spokesperson of the Secretary-General on Myanmar elections, 8 November 2010, <http://www.un.org/sg/statements/?nid=4911>, accessed 20 November 2014

community as bearers of legitimacy is willing to help Myanmar and its new growingly democratic government achieve.

The socializing need for legitimacy and its motivational effect on states to adhere to international norms and standards is also elaborated in the Risse, Ropp and Sikkink's (1999: 38) seminal book, *The Power of Human Rights: International Norms and Domestic Change*. They claim that states, "in addition to securing domestic consent and legitimacy...also seek international legitimacy."

An interesting case that speaks to this constructive and motivating perception of legitimacy in states drawn by the legitimacy of international institutions is that of the independent World Commission on Dams (WCD), which cannot be considered strictly a case of successful state adherence, therefore norm cascading, primarily because of the lack of international legitimacy of the Commission as perceived by states and international institutions such as the World Bank.

Beginning with the politics of undemocratic decision-making on issues related to river and water rights and development projects involving the construction of large dams, there was a growing movement against dams as early as 1994 (Dubash 2009) and increasingly louder protests (not yet a movement) targeted at the World Bank's promotion of large dams even earlier (Goodland 2010). Though the WCD was formed in 1998 and concluded its work by 2000 with a report¹⁸ that tabled new guidelines and procedures for the construction of dams, "Over the next nine years the Bank, along with the hydropower industry, resisted the guidelines and struggled with reformers" (Goodland 2010: 384).

¹⁸ WCD (2000), *Dams and Development: A New Framework for Decision-Making*, The Report of the World Commission on Dams, London and Sterling: Earthscan Publications

In the constructivist terms of the Finnemore and associates school of thought, “the WCD has fallen far short of reaching “a tipping point” that would have led to a cascading effect (Finnemore and Sikkink 1998). States such as South African and Uganda were among the first to launch national dialogues on internalizing some of the recommendations of WCD Report, meanwhile others, such as India and China, resisted because of the distancing of states from the deliberative process that limited and, perhaps even, delegitimized the Commission and its rules (Dubash 2009).

3.4. Internalizing Norms: Completing the Life Cycle

Once the meaning, power and legitimacy of a norm are sufficiently accepted by a critical mass of states, the final stage of norm development is internalization in the Finnemore and Sikkink ‘standard’ model. This may lead to domestic institutionalization of norms and habitual compliance on the part of the actors. Internalization is seen as the end of the norm’s life cycle because as an accepted norm it has been normalized or becomes normative practice. This is considered a successful cycle. This taken-for-granted stage makes conformity with norms almost automatic.

This is not to say that violations or normative breaches indicate a collapse in the life cycle. Violations can be as much an indication of normative strength as is adherence because it demonstrates a collective recognition and reminder of standards of behaviour. In this life cycle model, the focus in the internalization stage is also on agency. Here the model focuses on the agency of professionals who “often serve as powerful and pervasive agents working to internalize norms among their members.” These include economists, doctors, bureaucrats and other decision makers (Finnemore and Sikkink 1998: 905).

Relatedly, “iterated behaviour and habit” is also another powerful mechanism. This is not in reference to adherence to norms, but a process of

trust creation amongst members of a collective. “Frequent interactions among people involving joint work on technical tasks would ultimately create predictability stability and habits of trust. As trust became habitual, it would become internalized and internalized trust would, in turn, change affect among the participants. Changed affect meant changed identity and changed norms as empathy and identification with others shifted” (Finnemore and Sikkink 1998: 905). And so the cycle continues.

3.5. The Gaps: Missing Dynamics of Norm Development

The life cycle model developed and used by Finnemore and their associates provides a sound foundation for developing understanding the construction of social knowledge and social practices in international relations. However, it is limited in that it does not capture and reveal the dynamic nature and complex richness of norm development.

As Finnemore (1996: 185) herself remarks, there is a need “to clarify the mechanisms whereby norms are created, changed and exercise their influence.” This thesis agrees; it contends that constructivist accounts of how norms spread and develop are deficient in terms of the mechanisms by which these processes occur. In this sub-section we provide a critique of this life cycle of international norms model from this perspective. The limitations and challenges discussed below also set the agenda for the rest of this thesis:

3.5.1. Overlooking Centrality of Norms

Interestingly, Finnemore et al’s life cycle model is not focused on the norm itself, where it emerges from, and when and how. This is perhaps the main critique – that the norms themselves are not central to the theoretical building blocks of the model, though they are central to constructivism itself, as explored in the previous chapter. This is an overarching limitation that

correlates to the agent-centric scope of the theory, its synchronic nature, the linear view of norm development, and more.

This is not to say that in this thesis we are arguing that the primacy of the agent be replaced by the primacy of structure. On the contrary, it is important to more systematically include structural elements. A better theoretical approach would perhaps require appropriate space for interplay of both agency and structure. There are some constructivists, such as Florini (1996) who focus solely on the structure. Through an evolutionary approach, she claims that norms “wax and wane over time,” and her theoretical work seeks to explain why and how. This evolution model is all about the structure, which uses the agent only as intervening variable. It is not an investigation about how norms influence agents’ identities and interests, but an exploration of the mechanisms that influence norms themselves. Her theory claims that norms are like genes and that norms too follow an evolutionary pattern. Not only do genes direct the behaviour of their constituent individual but this neo-Darwinian theory also indicates that the norms, like genetic inheritance, “culturally transmits sets of beliefs, attitudes and values.”

However, one of the crucial elements of this theoretical approach is also its most contested. Florini contends that norms, like genes, are in constant competition with other norms and the most fit norms survive through a process of natural selection or the new norm must at least “fit coherently with other existing norms,” thereby not only lending it coherence but also legitimacy. Meanwhile, she is unable to sustain the neo-Darwinian approach, as she introduces the norm entrepreneur – similar to the life cycle model – as integral to the evolution process. The theory also leaves unexplored the reasons for an actor to promote a norm unless they already identify with it thereby reinforcing the actor’s identity. Problems remain in norm-centric theories as well.

This leads to an understanding that an improved framework to capture the development of a norm would make appropriate space for both structure and agency, and for dynamic processes in which these inter-relate. This research proposes a mid-level modification of Finnemore et al's approach, which allows for a deeper theoretical grounding through norms, and not just agency.

This is developed in the next chapter. However, we argue that moving beyond the present framework requires three key steps. Firstly decompress the life cycle. Secondly situate the norm being studied within broader and other structures, or at least as far as applicable or appropriate, that frame international community. Thirdly, understand norm cascading beyond just state adherence to include other key types of actors in international society. Each of these is now discussed in turn.

3.5.2. *Compressed Life Cycle*

Finnemore et al's life cycle model enables a useful examination of norm development, but it is a synchronic assessment. The concern here is that by starting the life cycle with the norm entrepreneur, the framework delinks the emerging (or new) norm from existing structures. From entrepreneur to tipping point, cascading and internalization, the life cycle is a compressed and linear exposition of how an international norm is constructed, and disregards the significance of structure.

It is useful to lean on Giddens' (1979) theory here; his theory recognizes the existence of knowledge as a measure of how things are to be done, the recursive mobilization of this knowledge through social practices and that the production of certain practices assumes certain respective capabilities. Therefore structure is not only *patterns of interactions* but also *continuity of interaction* in time. Structures have motivational force, or are realized only

through the socialization of agents and their interaction in collective knowledge (Wendt 1992).

This process of interaction and socialization reinforces structures and reproduces them. At the same time as structures are being reinforced, they also reproduce the identities of agents that are socializing in the system of shared understanding. Giddens' *patterning of interaction* only partly answers questions in relation to how a norm emerges, or how states come accept and to adhere to certain norms. The missing dimension is that of the *continuity of interaction* in time. This temporal dimension that is missing in Finnemore's life cycle model is not only indicative of how states will behave or behave as time goes on, but also of how they behaved in the past.

So a compressed view of norm development as in the standard life cycle model that understands it as a process from point A to point B is too reductionist. Social knowledge and social practices cannot be studied in a single moment or period in time. This implies that the further development of the model (in chapter 4) needs to add a temporal dimension that allows for a better understanding of norm construction in a more dynamic way. It will place the emergence of a norm along a genealogical continuum that not only allows a diachronic examination of its meaning, power and legitimacy, but also embeds it in existing normative structures, knowledge and practices.

3.5.3. *Delinked from Norm Ecosystems*

We now turn to the second concern identified above: the need to enable situating norms in existing structures and agency. Finnemore et al's life cycle model's linear approach in this context seems to delink the construction of norm, and present it in a theoretical vacuum. What this means is that when studying the life of a norm, only that particular norm is examined without linkages to existing normative structures or norm

ecosystems. It does not examine the life of a particular norm in the context of existing agency and structures, their existing relationship and dialectical dynamic, and the interaction created between them in the case of the emergence of a new norm or continued development of an existing norm.

For instance, how do the conflicting norms of sovereignty and colonization coexist? Over fifty years since the 1960 Decolonization Declaration¹⁹, the Special Committee on Decolonization admits that there are still 17²⁰ Non-Self-Governing Territories (the politically correct terminology for colonies) across the globe, home to nearly 2 million people. International human rights norms are even more complex, as demonstrated by some instances.

The destruction of the World Trade Center and the twin towers in 2001 brought the very foundation of the Convention on Torture into the international spotlight. America's response in the form of the 'Global War on Terror' questioned the very foundations of the international system that recognized that "the equal and inalienable rights of all members of the human family are the foundation of freedom, justice and peace in the world." It was not only a violation of the torture convention and human rights laws, but also, as some scholars called it, an assault on the Geneva Conventions itself:

"Now, torture has been brought out from the darkest corners of recalcitrant regimes and become another 'issue' to be considered. It is justified not only on prudential grounds, but also on moral and legal ones, or fenced off with definitional niceties – so 'waterboarding' (coerced, simulated drowning) is declared to be within the bounds of acceptable interrogation methods. But

¹⁹ *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960, UNGA Res 1514 (XV)

²⁰ Decolonization of the Western Sahara still remains to be complete. Spain withdrew on 26 February 1976, however in 1990, the UN left it to the people of Western Sahara to complete the process of decolonization. Therefore Western Sahara is still on the list but Spain is no longer listed as the administering power, effecting making it 16 NSGTs.

the real measure of the damage brought about by reintroducing torture into state conduct can be seen in the way that is now features in the media...and legal argument in favour of codification has even appeared in the non-specialist press” (Whitman 2010: 205-206).

Quite often, conflicting norms coexist; long-standing norms regress, evolve or devolve causing praxis ruptures. An emerging norm – old or new – has to be situated in an existing norm ecosystem to truly grasp its significance in meaning, power and legitimacy. In such a dynamic environment, the existing beliefs and attitudes of the norm entrepreneur should, perhaps, also come into question. And as per the life cycle model, at the international level a norm entrepreneur becomes active or activated only when there is enough support to do so through international or transnational organizations, advocacy groups or governments. It would seem that the cascading of a norm is already in play when the entrepreneur emerges.

These issues have implications for a crucial aspect of norm development – that of norm cascading, which substantially informs the main hypothesis and lines of argument for this thesis. Firstly norm cascading cannot be analytically confined to the point of state acceptance and adherence. It is a more complex process. Secondly, discussions thus far seem to imply that norm emergence, evolution, devolution and normative shifts are all part of the cascading process. It is not only one stage of the life cycle, but an overarching whole. And to better understand norm cascading, as a more complex and dynamic process, one needs to step back from the agent-centric focus of the life cycle model and move away from state adherence.

3.5.4. The Limitations of Equating State Adherence and Norm Cascading

By restricting norm cascading to a single dimension of state adherence, leaves the study of a norm’s development theoretically and analytically wanting. Models, such as Risse et al’s spiral model (discussed above) delve

deeper into the processes of norm cascading, but they still essentially provides a linear framework of the “induction of new members...into the ways of behaviour that are preferred in a society” (Risse, Ropp and Sikkink 1999: 11). The understanding here is that norms can influence the identity and interests of states and continually do so, but norms do not change.

On the other hand, Florini (1996) contends that norms do change because of the natural processes of evolution. In stating that competing norms can emerge and co-exist, she inevitably questions the inherent legitimacy of norms till the surviving norm gains legitimacy through the process of natural selection. Cascading is characterized by the conscious acceptance of a new norm or the conscious reproduction of a social practice. These schools of constructivist scholars do not elaborate on the concept of cascading as a static or continuous process. Theoretically and analytically, cascading is limited to state acceptance and adherence.

This present research argues that norm cascading is more than state adherence. It is better understood as the framing of meaning, creation of power and establishing of legitimacy in international society, as the extracted and discussed in the earlier part of this chapter. It characterizes the patterns of interaction, to use Giddens’ phrase. It can also lay out the framework to understand continuity of interaction over time. A thick understanding of norm cascading will thus not only include the continuity of interaction of agents, but also the continuity of interaction of structures and the continuity of interaction between agents and structures. This continuous and cyclical process may take place alongside the patterning of interaction.

Continuity of interaction over time would involve processes or set(s) of processes that contribute to the dynamic advancement of existing norms, or the processes of embedding emerging norms within existing structures and thereby capturing the various layers of normative shifts, or both. These

could include, but is not limited to, a constant process of norm diffusion of existing or through emerging norms, gradual intensification and reinforcement of the power of a norm – existing or emerging, incremental universalization or increasing reach of an existing norm because of an emerging norm, etc.

This thesis will develop the analysis and frameworks particularly in relation to two such processes: replication and particularisation. Using a cluster approach, each of these processes, explored and operationalized in the next chapter, examines dynamic norm cascading before state adherence.

3.5.5. Taking More Account of Change and Order

Deliberating on the processes of norm cascading leads to the challenge of capturing what Finnemore and Sikkink call norm shifts, change by another word. “Shared ideas, expectations, and beliefs about appropriate behavior are what give the world structure or, order and stability. The problem for constructivists thus becomes the same problem facing realists – explaining change” (Finnemore and Sikkink 1998: 894)

Finnemore’s life cycle model faces the same problem. Though order and stability is revealed to some extent, it is limited in that it does not capture change, except through state adherence and shifts in agents’ behaviour. The framework does not encourage or facilitate an exposition of norm shifts. In fact, this also leaves the understanding of constructivist order incomplete because the framework also does not clarify on the dynamic between change and order.

Koslowski and Kratochwil (1994: 223-224) briefly bring out this linkage between change and order in his outlining of the two types of change. On the one hand, change is that which occurs “within the framework of well-established conventions,” and on the other hand a more fundamental type of

change alters “the practices and constitutive conventions of a social system.” He goes on to demonstrate that international change is a “multilevel phenomenon in which precedence cannot be accorded a priori to either domestic or international structure.” Though this is a useful determination, which also comes through the case of study on the UN Guiding Principles used in this research (see chapters 6 and 7), we argue that Kratochwil’s separation of minor and major changes is unduly limiting.

Norm shifts also have to be embedded in existing web of relevant structures. Ripple effects are may occur within well-established conventions due to fundamental alterations in practices and conventions of a social system, in this case international society. For instance, decolonization not only disrupted a social system, but also helped to strengthen international human rights. To cite another example used earlier in this chapter – the resurgence of the use of torture not only creates norm shifts within the related well-established convention, but also creates ripple norm shifts in practices of sovereignty, human rights and more.

This clarifies and locates another key aim of this thesis – to develop and use a framework for international norms development and cascading that takes better account of stability and change within two processes – cyclical change and catalytic change. As will become clear, these form an overarching layer in the revised norm life cycle elaborated in the following chapter. They are not mutually exclusive processes, but overlap and interplay.

3.6. Conclusion

An examination of the life cycle framework in this chapter, and the nature and scope of the concept of norms and constructivism itself in chapter 2 demonstrate that the complexity and dynamism of ideational international relations is missing. This research contends that Finnemore and associates’

constructivist accounts of how norms spread and develop in international society are inadequate for supporting understandings in terms of the mechanisms by which these processes occur.

By explaining norm development in a linear, agent-centric and agent-driven framework, the life of a norm seems flat. The nature, role and scope of the structures, and of agency-structure dynamics, which are central to constructivism is not adequately addressed in Finnemore et al's life cycle model. An acknowledgement, or incorporation of how norms exercise influence of any kind on existing or emerging normative structures, or on agency is inadequately developed.

The conceptual and theoretical development of cascading – the core of norm development and diffusion – is also restricted. Here too, agency is dominant, and state adherence is the driving force for norm cascading. Most importantly, the explanation of change is also limited. Though change is a core tenet of constructivism, as discussed in chapter 2, the dynamism of change is not fully explored or captured. One reason is perhaps the focus on the impact of agency on structure and not the other way around. This is not only a one-sided view, but also overlooks a crucial constructivist tenet – the mutually constitutive nature of agency and structure.

The examination of the life cycle model and its limitations open up the potential to expand the framework, and explore norms and their development in a more complex and dynamic manner. A more dynamic understanding of the development of international norms provides a clearer picture of the power of norms, i.e. the structure and how they become powerful and not just the power of agency that empowers norms by state adherence. It also contributes to rethinking the understanding of change and progress in international relations.

The key to a better multi-dynamic comprehension of norm development is to delve deeper into norm cascading, as an overarching life cycle process and not just one stage in it. It will set the stage to explore their 'continuity of interaction' conceptually and theoretically. The rest of this thesis lays out the revised framework by introducing small but significant changes to the life cycle framework. It is not an attempt to address all the limitations, but a micro-paradigmatic shift that sheds light on the complexity of norm development, and illuminates better its dynamic nature, role and significance.

CHAPTER 4.

DYNAMIC NORM CASCADING: AN ENHANCED THEORETICAL FRAMEWORK

“It is my purpose here to bring to light, not what this ideal has done, but simple what it means; what it indicates; what lies hidden behind it, beneath it, in it; of what it is provisional, indistinct expression, overlaid with question marks and misunderstandings...What is the meaning of the power of this ideal?”

- Friedrich Nietzsche (1887, 1913: 107)

As examined in the previous chapter, Finnemore and associates' life cycle framework of norm development lays out how international norms come to be formed, accepted and adhered to in a simple and neat linear model. Though groundbreaking, their theoretical proposition does not allow examination of the complex nature of norm development – their intersubjective dimension, the diffusion of norms within existing structures and across time and space. The life cycle model provides a compressed and blackboxed view of the development of international norms.

This present research contends that (hypothesis):

Constructivist accounts of how norms spread and develop are deficient in terms of the mechanisms by which these processes occur. Norm cascading is more dynamic and multi-dimensional. Norms extend their reach and reinforce their power and legitimacy through replication and particularization before state acceptance and adherence, and do not merely cascade through state acceptance and adherence.

To borrow Nietzsche's words, there is something "hidden," and something "beneath" not just at the tipping point stage but also before state acceptance and adherence. The aim of this research is to insert mid-level theoretical building blocks to the life cycle model in an effort to reveal and enable better understanding of the more intricate and dynamic nature of norm cascading through the specific processes of replication and particularization.

With this proposed mid-level theoretical framework, the research aims to dig beneath the standard model of norm cascading – ontologically and epistemologically – to understand what a norm means in a decompressed state when it is conceptualized, accepted by states and is adhered to or violated. It also reveals the meaning behind the processes of cascading and how they cascade. This will allow for a better understanding of where the power of norms comes from, and how they diffuse, are maintained and legitimized. This will also reveal how norms are applied and sustained over time, despite their inapplication and, more often than not, outright disregard and violation. The question leading the investigation is: How do international norms cascade before state acceptance and adherence?

This chapter is organized into three sections: It starts with a discussion on the scope of the proposed mid-level theoretical framework, followed by the section elaborating the framework, its processes and operationalization. The concluding section maps out a step-by-step application of the framework, which is set out in three phases. The proposed mid-level framework is tested in the following chapters 5-7 in two stages – preliminary and in-depth testing. In the preliminary stage, two different international norms are used in the test run, which will strengthen the framework and in-depth study of the main case study of this thesis – the 1998 UN Guiding Principles on Internal Displacement.

4.1. Scope of the Enhanced Framework

Drawing inspiration from the life cycle model, taking its conceptualization of norm cascading further by stepping away from and looking before state acceptance and adherence, and addressing some of the limitations discussed in the previous chapter, this research's proposed theoretical framework is a mid-level building block that rethinks the creation, development and diffusion of international norms in five ways:

4.1.1. Decompressing the Life Cycle of a Norm:

The appeal of a synchronically compressed life cycle is obvious. It presents a clear and uncomplicated picture of stability, order and cohesion. In the standard model, change is also simply, characterized by state acceptance and adherence at least in the first instance of accepting a new norm. In a decompressed approach we can proceed to understand the development of an international norm as “*continuity of interaction*” in time and “*patterning of interaction*” across time as Giddens (1979: 62) rightly insisted as fundamental to understanding social structures. In this, his “non-functionalist manifesto,” Giddens argues that temporal-spatial elements are crucial to the understanding of structures and how they work without which any analysis is a synchronic, ahistorical and static view of not only society – the international society in the case of this thesis – but also of change.

A diachronic and dynamic approach (see Figure 2 below) reveals the complexity of international norms and their role in understanding both order, cohesion and structural and systemic change at the international level. The most important aspect of a decompressed approach is its ability to move away from a state-centric condensation of norm cascading, and understand the life cycle of a norm before state acceptance and adherence. As reflected in figure 2 below, norm cascading is not a phase between norm emergence and internalization as explained in the diagrammatic representation of the life cycle model in figure 1, but norm cascading begins at the stage of emergence itself.

4.1.2. Relinking to Norm Ecosystems:

The reformulated norm life cycle also seeks to situate emerging or evolving norms within existing normative structures. The processes of replication and particularization will also reveal how the norms being studied are linked to existing structures, how the former influence, conflict with, coexist, or change the latter, or vice versa. This approach adds to the dynamic understanding of norm life, development and diffusion.

4.1.3. Rethinking Norm Cascading Before State Adherence

Such a revised framework also allows a deeper examining of norm development beyond an agent-driven approach that is singularly focused on state adherence. A thick understanding of norm cascading will not only include the continuity of interaction of agents, but also the continuity of interaction of structures and the continuity of interaction between agents and structures. This continuous and cyclical process may take place alongside the patterning of interaction.

4.1.4. Exploring the Mutual Constitution of Agents and Structures:

The primacy of agency of states as indicated by the sole measure of norm cascading is also a problematic that is addressed by our proposed building blocks. Though one of the tenets of constructivism is the mutual constitution of agent and structure, the life cycle model is agent-centric. In the words of Fierke (2001: 117), "This is overly agentic in so far as it does not sufficiently embed these state actors in a historical context and raise questions about how their agency became possible." This research's proposed framework is in this respect structure driven, which when linked to the existing life cycle model provides both a structure and agency driven understanding, which is the beginning of exploring the mutual constitution of these essential constructivist elements.

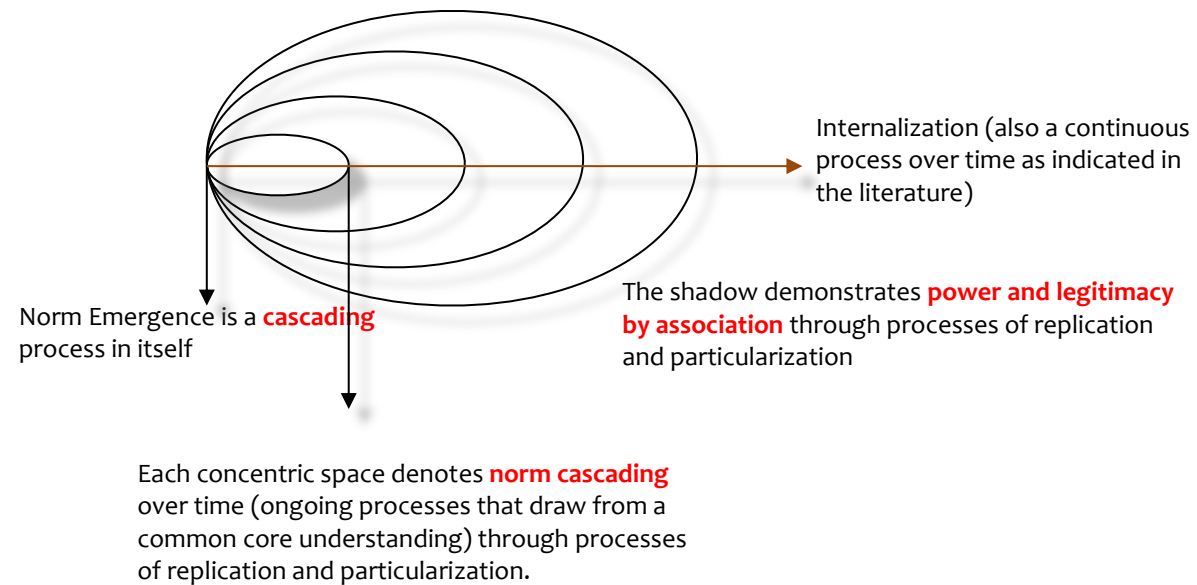


Figure 2: Enhanced Life Cycle of International Norms

4.1.5. Reexamining Change and Order:

The possibility of change is an important tenet of constructivism and its understanding of normative international relations as discussed in an earlier chapter. However, it cannot merely be hinged to state acceptance and adherence and explained as a smooth transition from one life cycle phase to the next – from non-existence to existence, from old to new, or from violation to adherence. Change is destructive and conflictual, but also stabilizing and cohesive – two sides of the same coin. Change has to be understood in relation to order. With the insertion of this mid-level theoretical framework, normative change and order can be understood and examined in more comprehensively.

4.2. Dynamic Norm Cascading Framework

This section that focuses on the thesis' proposed dynamic norm cascading framework is set out in three sub-sections: First the processes that define the framework are explained, followed by an exploration of the operationalizing variables in the second sub-section. This section concludes with a theoretical exploration and dynamics of normative change and order.

4.2.1. Replication and Particularization: Processes of Proposed Framework

The table below visually sets out the insides of the proposed mid-level building blocks. This thesis proposes two processes to better reveal the dynamic nature of norm cascading. These are replication and particularization, and they are not mutually exclusive processes. The table lists the elements and its operationalization under each process. The elements that define each process are drawn and extended from the same features that characterize norm cascading in the life cycle model – meaning, power and legitimacy. These are explored and explained further in the following sub-section.

DYNAMIC NORM CASCADING BEFORE STATE ACCEPTANCE & ADHERENCE			
REPLICATION		PARTICULARIZATION	
Elements	Operationalizing Variable	Elements	Operationalizing Variable
Reinforcing meaning and reach	Clarity	Extending meaning and reach	Specificity
Reiteration existing power	Control	Creating power by association	Capacity
Strengthening existing legitimacy	Perception	Creating legitimacy by extension	Process
ORDER		CHANGE	

Table 1: Analytical Matrix of the Processes in Enhanced Framework

4.2.1.1. Replication

This is a process that involves the creation of practice(s) through the emulation of elements of previously existing social structures. Though the creation of practice signifies norm creation or norm emergence, the nature of process of emulation signifies cascading in that it reiterates, reinforces and strengthens what the community of states knows, understands and accepts. This means that new norms do not always take the place of existing norms. And various norms are not always in conflict with each other. A continuous process indicates that the emergence of a norm is not always a result of the dramatic competitive upheaval and elimination of an existing

norm. They may be more cross-links and associations between norms than accounted for. It also indicates that cascading begins from the emergence of a norm making it a more continuous process. The process of replication in norm development could (a) reinforce broader shared understandings (b) increase the power of existing norms and assume some degree of this power by association and (c) reiterate the existing parameters of legitimacy in a collective. Indicators of replication lie in the clarity of meaning, control of power and perception of legitimacy.

4.2.1.2. Particularization

This process is defined by its characteristic to specify or streamline existing norms to narrow focuses. Particularization can also be a micro-process within another process. For instance, the Convention on the Rights of a Child replicates existing international human rights and humanitarian norms, but the emergent norm has also been narrowed down to only focus on children. Therefore the creation of the Convention is not only a replicative process but it also particularizes the accepted standards and practices of human rights to children. The process of particularization in norm development could (a) specify an issue area and create and integrate issue-specific practices within a broader collectively shared framework (b) focus on a group of people or community (c) assume the power and legitimacy of existing norms by concentrating the same on a specific issue or group. Indicators of particularization are specificity of meaning, power by association and the process of legitimization.

Only two processes have been identified in this thesis. This is not to say that these are the only processes that can explain norm cascading dynamically. Scholars such as Richard Price have used a constructivist approach to study the ban on chemical weapons through what he calls grafting of meaning – in this case from an understanding and meaning of poison. However, Price's (1997) primary objective is not to understand the process

of norm cascading itself but to study “the relationship between technology and morality” genealogically. Others such as Berger and Luckmann (1996) theorized about sedimentation, institutionalization and legitimization as processes of normalization but they were referring, again, to reproduction of practice through what agents/actors or persons said or did – their behavior through words or deeds – and the verbal or active conformity to norms, normative standards or even laws.

It is also necessary here to recognize the difference in the processes proposed in this thesis and that of reproduction of practice as understood in the constructivist literature to avoid any conceptual confusion between reproduction and replication and particularization. Reproduction is the conscious application of a practice within a context as seen fit by the agent involved. Replication and particularization are different, firstly, because though reproduction may be considered a form of cascading, it only reaffirms the existing structure in its current form through the execution of an act. Secondly, replication and particularization also does not involve the application of practice; there is no execution of an act. These processes are defining, elaborating or integrating practices; i.e. making practices available for application in reinforced or specified forms. Finally, replication and particularization are processes in the development of a norm that initiate or enable change, while reproduction is an indication of the existence of order.

4.2.2. Operationalizing Replication and Particularization

Gain meaning and reach, create power and establish legitimacy are the three elements that form the core nature and scope of norm cascading as has been extracted in the previous chapter. But what does it involve in a decompressed and dynamic form?

Therefore, as a continuing process of interaction across time and space before the tipping point of state adherence, this research proposes a re-

understanding of norm cascading as: (i) *Extending meaning and reach* (ii) *Reinforcing existing power and creating power by association* (iii) *Strengthening existing legitimacy and creating legitimacy by extension*. In characterizing norm cascading as a continuous process, a dynamism is put in motion from the very stage of norm emergence – from the very initiation of the framing and affixing of meaning, defining and conceptualization, and (re)construction of social reality.

(i) Extending Meaning and Reach by Reinforcing Existing Intersubjective Structures

The creation and affixing of meaning - persuasive messages - is an important element of norm cascading. However, this affixing of meaning is not done in a vacuum as Roger Payne (2001: 38) points out: “Persuasive messages, however, are not transmitted in an ideational vacuum.” It is perhaps because of this that it is said that only parents can understand what their babies, who have just begun to talk, are saying. The world of parents and their baby is a mini ideational vacuum in which parents extend the boundaries of their understood meanings and intersubjectivities, and are more liberal with the newly talking child. Nobody apart from the parents may be able to comprehend the child. This is more so that parents can encourage babies to talk, and in time socialize them – through school, pre-school group interactions, interaction with the larger family, neighbourhood, community and so on – into the constructs of their world where more than just parents can comprehend a child’s words and utterances.

Payne, Barnett and other constructivist scholars are right in assuming that new meaning comes from, is inspired from and, sometimes, even directly copied from existing meanings. Otherwise no one would understand or accept what is being said. New ideas are said to “resonate” because of some ideational affinity to other already accepted normative frameworks

(Keck and Sikkink 1998a). Dynamic norm cascading begins with framing within existing constructs of social reality.

For instance, Raphael Lemkin, as described above, created a new word to comprehend the heinousness and brutality that the world witnessed during the Second World War. But by bringing together existing concepts – *geno* and *cide* – Lemkin was essentially doing two things: replication and particularization. Onuf (2013: 40) calls this “metaphorical extension.” He says “Through predication new concepts acquire names already in use, and they give their names to yet newer concepts...Metaphorical extension is an inevitable consequence of predication - of speech itself – and the engine for changing what we think we know.” Onuf’s metaphorical extension also extends to his understanding of how structures are made, “...agents make models with institutional effects by resorting to models with institutional effects.”

What Onuf fails adequately to recognize in his agent-centric formulation is how and why agents resort to the institutions they resort to in the first place - because structure also constitute the agent; they are embedded in each other. Meanwhile, Lemkin also compiled existing laws and norms to frame his concept so that the community of states could act upon it, not just understand it. This is an important aspect of dynamic norm cascading - not just the creation of meaning, but also the creation of intent. And in a politically charged environment such as international relations, meaning and intent are equally important.

No one explains this interesting relationship better than Richards and Ogden in their famous 1923 book, *The Meaning of Meaning*. In it they quote an important question from another scholar, Alan Gardiner (1922), from his article published a year earlier:

“Is the meaning of a sentence that which is in the mind of the speaker at the moment of utterance or that which is in the mind of the listener at the moment of audition? Neither, I think. Certainly not that which is in the mind of the listener for he may utterly misconstrue the speaker’s purpose. But also not that which is in the mind of the speaker, for he may intentionally veil in his utterance the thoughts which are in his brain, and this, of course, he could not do if the meaning of the utterance were precisely that which he held in his brain. I think the following formulation will meet the case: *The meaning of any sentence is what the speaker intends to be understood from it by the listener*” (Ogden and Richards 1923: 192-193)

Ogden and Richards (1923: 193) further explain Gardiner by expanding his use of the phrase ‘to be understood as follows: “It stands for: (a) to be referred to + (b) to be responded with + (c) to be felt towards referent + (d) to be felt towards speaker + (e) to be supposed that the speaker is referring to + (f) that the speaker is desiring, etc. etc.”

But it is not always as easy as uttering what one intends to mean to get the listener to understand your intention. For instance, if a member state were to say in a UN meeting, “We are with Iran.” This statement does not only mean that the hypothetical member state supports Iran, but it also extends to mean, “We are ideologically opposed to the United States.” Sometimes it is not in the words that are said but in those that are not – a member state’s act(s) is also a statement of intention and meaning because each norm is further defined by what is considered appropriate behavior by member states.

For instance, a veto by Russia and China on the need for an intervention to investigate war crimes and crimes against humanity in Syria and hold the

Syrian government accountable is a clear statement of intention and their stand that sovereignty trumps human rights violations and war crimes for these P5 countries and a stand against a resolution brought forth by the United States.²¹

There were four such vetoes. However, the vote on UN Security Council Resolution (UNSCR) reiterating that it was Syria's responsibility to protect its own people was unanimous. UNSC Res 2139 "*Also demands* that all parties take all appropriate steps to protect civilians, including members of ethnic, religious and confessional communities, and stresses that, in this regard, the primary responsibility to protect its population lies with the Syrian authorities..."²² However this resolution's primary aim was to ensure unrestricted humanitarian access to the victims who were caught in the midst of the civil war, and this R2P insertion in paragraph 9 seemed more an assertive reminder to the international community to uphold the norm of sovereignty.

R2P is perhaps one of the most contested and conflictual international norms that exist today. It sits at the cusp of the inviolable norm of sovereignty and extensive and ever-growing norms of human rights. Its insertion into the realm of international norms was made when Francis M. Deng, Zartmann and other scholars proposed an academic shift in understanding sovereignty as responsibility, and not just a right, in addressing issues of conflict management and conflict resolution. Their 1996 thesis specifically looked at the many violent crises in Africa especially those on a genocidal scale, such as in Rwanda. Sovereignty as responsibility soon became R2P with the international report initiated by the Canadian government and brought together by an eminent group of experts

²¹ Global Centre for R2P (regularly updated), *Populations at Risk: Syria*, <http://www.globalr2p.org/regions/syria>, accessed on 20 January 2015

²² UN Security Council Resolution S/RES/2139 adopted by the Security Council at its 7116th meeting on 22 February 2014

– International Commission on Intervention and State Sovereignty (ICISS) – through consultations and deliberations across the world.

The ICISS' 2001 report sat on the fence when it came to deciding whether sovereignty in its present form was useful any longer or if a reformulated understanding should replace the old. It endorsed the old and the new or reformulated norms of sovereignty with equal importance: "...the conditions under which sovereignty is exercised – and intervention is practiced – have changed dramatically since 1945," the report stated in paragraph 1.33. But in the immediately following paragraph, the report states, "All that said, sovereignty does still matter. It is strongly arguable that effective and legitimate states remain the best way to ensure that the benefits of the internationalization of trade, investment, technology and communication will be equitably shared." Having positioned themselves in the middle, the ICISS proposed that sovereignty is not just about intervention or non-intervention²³, but also about a responsibility to protect.

The reformulation was intended to change the meaning of intervention – necessitated by human protection grounds, as would have been the case in Somalia, Rwanda, Srebrenica or Kosovo²⁴ – and not in any way meant to disorient international relations that is rooted in and founded on the solemnity of sovereignty. The ICISS experts tabled the need to establish clear rules, procedures and protocols to establish the need for human protection, establish the legitimacy of intervention, ensure that military intervention sticks to the purpose to protecting civilians in need, and eliminate the causes of the conflict and lay the ground for durable peace.

²³ Sovereignty is the organizing principle of the United Nations as stated in Article 2.1 of the UN Charter, and characterized by non-intervention in domestic affairs as prescribed by Article 2.7 of the same charter.

²⁴ The international community has been criticized time and again for sitting back and watching as hundreds and thousands were massacred in each of these countries, every time only parroting "never again!" The ICISS report has rightly cited these cases as examples of instances that would necessitate intervention on human protection grounds.

This close to 100-page ICISS report was reduced to a three paragraphs in the 2005 World Summit Outcome Document. Paragraph 138 accepts R2P as an international norm to protect civilians against genocide, war crimes, ethnic cleaning and crimes against humanity; paragraph 139 lists the existing measures provided for in the UN Charter in the case of intervention through peaceful or forceful means; and paragraph 140 indicates the global community's support for the work of the Special Adviser of the Secretary-General on the Prevention of Genocide.²⁵

A 2009 Report by the UN Secretary General on the implementation of R2P was able to elaborate on some of its conceptual and operational aspects with three normative pillars – the responsibility to protect lies with the state; the international community has a responsibility to encourage and assist states in fulfilling this responsibility; and The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from the aforementioned crimes in a timely manner.²⁶ It can be seen in this brief summary of the emergence of the norm of R2P, its meaning and intention has become progressively clearer. But the elaboration in meaning and the operationalization has not made the R2P norm any less contested or confusing or any more adhered to. Since 2005, there have been several instances of unilateral military action that violates, often blatantly breaches, the norm of sovereignty – US intervention in Libya, unilateral US strikes in Syria, to name a couple of the most recent such instances. These are cases of taking the meaning and intention of the R2P norm too far to the extent of diluting its accepted understanding.

Dilution of meaning is also a concern of importance to creators of meaning. Extension of meaning and reach may not always have the intended positive

²⁵ UN General Assembly Resolution A/60/L.1, Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields: Follow-up to the outcome of the Millennium Summit

²⁶ *Report of the UN Secretary General on Implementing the Responsibility to Protect to the United Nations General Assembly A/63/677*

effect. Such debates over meaning have taken place in trying to stretch the meaning and reach of genocide to protect more victims. Following Lemkins's construction of the category of genocide with the intention to protect national groups who were being intentionally annihilated through a coordinated plan, several legal scholars successfully, and some not so successfully, extended the construction of genocide to include many more political groups and classes. The not-so-successful attempts involved expanding the intention of the acts such as, "mass bombardment, effects of occupation, depopulation, famine, disease, and gross negligence (Bhopal, Chernobyl) have led some scholars like Henry Huttenbach to propose either eliminating these actions entirely or distinguishing degrees of intent. The danger here is, of course, that the word can easily become emptied of meaning, degraded by excessive and needless repetition, finally reaching the stage of what Alain Finkielkraut called "verbal incontinence"" (Rabinbach 2005: 71).

There has to be control over meaning, its diffusion and extension; a lack of meaning control can cause meaninglessness. And then there are times when creating meaning also involves stating what a concept or creation does not mean. And what something is not emerges from what is and what already exists. For some norms, even the most specific and clear meaning and intention cannot achieve the critical mass of states needed for common acceptance and adherence. Anti-whaling is one case that did not gain reach because it did not achieve the required number of states needed to support it to be accepted as an international norm that was defined by a shared intersubjective meaning. Jennifer Bailey titled this arrested development:

"The International Whaling Commission's moratorium on commercial whaling took effect in 1986...The effort ran aground because the norm proved unexpectedly ambiguous, *a supporting epistemic community failed to emerge*, the norm conflicted with other powerful norms, the prestige of the key anti-whaling states

declined relative that of whaling states, and NGO tactics failed to win over the publics in key whaling states and instead created a counter-boomerang effect” (Bailey 2008: 289)

Bailey subscribes to Florini, Franck and Finnemore and Sikkink’s prescriptions for a successful norm – specificity and clarity – to understand the reason behind the failure of the anti-whaling norm. This thesis also subscribes to these same elements to characterize extending and reinforcing meaning and reach as a determinant of dynamic norm cascading. Specificity of meaning and clarity of structure are crucial factors in the success or failure of a norm gaining reach, and, in turn, power and legitimacy. But Bailey does not recognize that specificity and clarity have to come from existing social reality or it is bound to fail despite the conflicted nature of the emerging norm. If the emerging norm stems from existing normative structures, the likelihood of norm cascading even before state adherence maybe more. To ensure acceptance of an emerging norm, it is perhaps necessary that the norm be rooted in existing social reality – established identities and structures. This means that states already identify with them, and in turn initiate cascading and adherence.

The process of creating meaning by subscribing to existing normative structures is the process of replication, which is characterized by clarity of meaning. It not only reinforces existing normative structures – in itself a cascading without adherence – but also extends meaning through specificity of meaning through the process of particularization. Clarity and specificity does not imply the duplication of normative texts or texts that provide rules, but also an extension of these or replication and particularization of the intent and objectivation of the norm being drawn from.

This implies that norms are developed by using existing structures of meaning; i.e., existing norms, to draw acceptance for a new practice. Or,

rather, the new norm is subsumed into existing structures of accepted intersubjective meaning. The aim is to get state actors to expand or shift their collective understanding to include a broader definition, or accept an appended dimension due to a shift in the environment. At times this might be smooth process that almost seems natural but at times it could be conflictual between, perhaps, norms that are more fundamental to the existence of the international collective and subordinate or secondary norms. The conflict could also be between two or more fundamental norms, such as between establishing effective measure of implementing the norms of human rights without infringing on the norms of sovereignty.

Therefore, replication is fundamentally conceptual where the structures of meaning in the international system experience slight shifts and are resettled without much, most often any, damage or devastation. Tectonic movements in the structures of the international system are an ongoing and, often, continuous process. These shifts and movements are crucial in capturing the dynamic nature of norm cascading as a continuity of interaction in time. They demonstrate that the emergence of a norm unavoidably enables the interaction of norms, thus dialectically initiating norm (re)cascading from the point of emergence itself of both the existing and emerging norms. In the present constructivist theory of norm development reach only follows the framing of meaning, critical support for the emerging norm, which begins defining the reach of a particular norm followed by norm cascading and internalization, which can be seen as a strengthening of this reach.

But in the dynamic model proposed here, reach is already implicit in the emerging norm as it is firstly a reinforcement of existing normative structures. Secondly reach is also characterized by the extension of objectivations that the emerging norm intends to address or for which the emerging norm was created in the first place – such as specifying the rights

of a child in a convention though most international human rights norms also apply to children. Reach is also the limiting of conceptual boundaries – it is as much about exclusion, as it is about inclusion. For instance, the adoption of the 1951 Refugee Convention led to the exclusion of those not falling under any state's protection and thereby had no rights but were not considered refugees under the 1951 definition. This leads to the second aspect of reinforcing the power of existing norms and creating power by association.

(ii) Reinforcing Existing Power and Creating Power by Association

Emerging new norms take on the meaning of existing norms through clarity and specificity as discussed in depth in the section above. Additionally, they also reinforce the power of the already known, already understood and already intersubjectively accepted norms through ongoing and existing discursive means. Therefore the process of replication and particularization, dynamic norm cascading is already in play even before state adherence through the replication and particularization of meaning, which reinforces the power assumed – considered almost natural – to define existing normative and extends it to the new norm by association. This is perhaps better explained through an extension of Giddens' characterization of norms as a "medium to exercise power" to existing norms are also a medium of power for the emergence and embedding of new norms – a medium to exercise the processes of normalization or norm cascading. It is in the same vein as Manners's (2002: 239) "normative power" which is a power that is able "to shape conceptions of the normal."

But Manners too is talking about state adherence. This embedded and dependent nature of new/emerging norms is not captured in the constructivist approach in studying the development of international norms. And for a better and deeper look at power and what it does, constructivism must wear its critical goggles and abandon its safe "middle ground" (Adler

1997) and go beyond what power is. The emphasis should be, as Guzzini (2005) rightly points out, on what power does and how has power come to do what it is able to do, or in the case of this research what power of norms does, and how has the power of norms come to do what it is able to do.

No one has better dealt with the complexity of power than Michel Foucault – though some, like Guzzini, complain that Foucault has been overused in constructivism's conceptual analysis of power, this research contends that it is not sufficiently overused – through his archeological approach to the order of things, genealogical exploration of the histories of the present power, and understanding of the all-pervasiveness of the power through and in the self. In examining power from order to panoptic discipline to biopower, Foucault also recognizes the importance of norms and normativity. In his thesis on biopower, Foucault identifies a norm as “an enabling link between the seemingly universal categories of populations or demography and the individual idiosyncrasies of everyday life” (Nealon 2008: 46).

Of course in Foucault's initial expression of norms began as a negative, isolating, and divisive feature of his idea of a normalizing society. These normative structures of society are derived from the human sciences – a body of knowledge or subject of study in which the man is the subject of study – which sets out the parameters of what is normal. In so doing, “The discourse of disciplines is about a rule: not a juridical rule derived from sovereignty, but a discourse about a natural rule, or in other words a *norm*. Disciplines will define not a code of law, but a code of normalization, and they will necessarily refer to a theoretical horizon that is not the edifice of law, but the field of the human sciences. And the jurisprudence of these disciplines will be that of a clinical knowledge” (Foucault 1997: 38).

It must be noted here that this discussion on foucaultian power is limited to its application to constructivist norm cascading and a reformulated

understanding as proposed in this research. It is not an attempt to (re)understand Foucault, but to understand and employ his approach to power as relevant in this thesis. And Foucault on power is relevant in three ways: First is his understanding of power as a capacity to normalize through discourse and institutions and institutionalization, as theorized in *Discipline and Punish: The Birth of the Prison*. This emphasis on structure is refreshing and is a fertile ground to continue this research's view of the mutual constitution of agency and structure fundamental to constructivism.

Secondly, in both disciplinary panoptican power and biopower, Foucault talks about power not being vested in the agent but passing through them, and that power is not imposed from above. "Power has its principle not so much in a person as in a certain concerted distribution of bodies, surfaces, lights, gazes; in an arrangement whose internal mechanisms produce the relation in which individuals are caught up" (Foucault 1977: 202). It highlights the embeddedness of agents in structures as much as agents constitute structures through mechanisms of production or reproduction. This point reiterates the importance of understanding the mechanisms through which norms develop and cascade, which is the core of this thesis.

Finally and most importantly, Foucault's genealogical approach to laying bear the discontinuous history of how power came to be as we know, accept and understand it today is methodologically significant to this thesis. It helps to understand how the concepts in a norm pass through time and space having transformed epistemologically and operationally, yet remaining conceptually true to its original intent. For instance, in Foucault's own exploration of punishment, a summary view would reveal that punishment was exercised through "torture" in the age of the king, as "social" in the age of enlightenment, and as "panopticism" in the present (Nealon 2008). These are all changing forms of punishment and changing targets of the practice with an unchanging intent to rectify abnormalities in respective societies.

This thesis employs the foucaultian approach to get a better sense of how power is operationalized in dynamic norm cascading. It is being proposed here (see table 1 above) that power within the constructivist remodeling of norm development, specifically in the understanding of norm cascading is realized through 'control' and 'capacity'. Through the process of replication of meaning of existing norms that are accepted as powerful, power's dimension of control is set in motion. Meanwhile as the extension of meaning is specified and targeted through particularization, the dimension of power that generates capacity is initiated. Though this dual nature and realization of power may seem like binary opposites, they are in fact mutually constitutive. Control and capacity can be seen as the two elements of power in dynamic norm cascading or as the two natures of power as described by Lukes (1986) and others, as 'power over' and 'power to' respectively.

In section 3.3 that discussed the standard understanding of norm cascading in constructivism, it was noted that Weber's characterization of power was not necessarily hierarchical. But in dynamic norm cascading and the dual nature of power, it is proposed here that power is also always hierarchical. Power over and power to can co-exist and operate at the same time. It is as Tony Evans (2005: 1065) has said of the human rights as both a regime of "freedom and domination." He says that for optimists, it is "power to the people" and pessimists see it as "power over people by promoting particular modes of thought and practice that support market discipline." Because meaning transcends time and space, it is also a medium of power that can overcome power over relationships creating a momentary dialectic condition of power with or power of. The hierarchy of power is reflected in a hierarchy of norms, which will be dealt with in the section on the understanding of international change and order when dynamic norm cascading is inserted into the present linear view of norm development.

A brief look now into the development of the 1951 Refugee Convention aims to clarify empirically some of the theoretical propositions on power made in this present research. Looking at the development of the Refugee Convention only from the late 1940s when states, through the Commission on Human Rights, initiated the move to create a new convention and a new organization for refugees would give an incomplete picture of the development and cascading of the refugee norms. One would have to look further back, much further back, in history to get a deeper and thorough grasp on the cascading of not only the Refugee Convention, but also the norms that are embedded (replicated and particularized) in this normative instrument.

There are three norms that weaved into the Refugee Convention – protection of refugees, protection itself and sovereignty. And each of these has a deep, long and thickly documented history that goes back further than the late 1940s. “Whereas the history of protection of refugees dates back at least a few centuries, not to mention refugee situation in Antiquity, the history of international protection starts with the League of Nations. No one would be surprised to learn that the International Committee of the Red Cross was the initiator of the international protection system set up by the League of Nations.” Jaeger (2001: 727), a former Director of Protection of the UNHCR, has rightly traced this genealogy of protection – specifically the protection of those affected by armed conflict – but has left out the more complex norm of sovereignty from his discussion. One cannot look at protection without sovereignty in this case. To be able to deliberate the normative conflict between sovereignty and protection, and how the power of these norms and their conflict normative power have also cascaded, the starting point would be a genealogy of the protection of refugees.

In the period before the creation of the League of Nations, the norm of protection and its application was limited to material assistance – humanitarian protection. And the protection of refugees was limited too meaning the power to protect was inadequate. It could be inferred that as the power lie solely with sovereign authorities at this time, elements of power – control and capacity – were both vested or assumed for a singular all-powerful authority who may or may not grant protection or could force those who fled from its persecution to return through population exchanges – 1913 Treaty of Constantinople, the 1913 Turco-Bulgarian Treaty, the 1914 Greek-Turkish Agreement (Jaeger 2001).

The First World War and its associated battles that caused a massive fleeing of nearly two million people from the Russian Empire compelled the Red Cross and related organizations and societies in 1921 to propose the appointment of a High Commissioner for Refugees, which led to the election of Dr. Fridtjof Nansen as the first high commissioner (Feller 2001). Here the power to protect refugees – capacity – was transferred to the international and bestowed with the Office of the High Commissioner and its related arms of operation. The primary task was the definition of refugees from the Russian Empire, extended later to cover the Armenian refugees and providing them with identity certificates or Nansen Passports (Jaeger 2001).

Herein lies the framing of the meaning of a refugee, but limited to the case of Russian refugees, Armenian refugees and later the German refugees, which in turn frames the meaning of protection at that time limiting it to those fleeing from specific countries. Though capacity was created, power's dimension of control remained with sovereign territories and their ruling authorities, which can be seen from the definition itself, and the obligation of issuing of travel documents.

The intergovernmental arrangement of 1926 stated that, "any person of Russian origin who does not enjoy or no longer enjoys the protection of the Government of the U.S.S.R. and has not acquired another nationality" (Simpson 1938: 608). In this definition, the norm of protection is subsumed to not having rights in one's country of origin or this case Russia, but it says nothing about protection from what – persecution, forceful eviction, ethnic cleansing, etc. It was only an attempt to replace sovereign protection with a form of transient protection as recognized by the international community.

A similar definition was provided for the Armenian refugees. However, the norm of sovereignty continued to be more pervasive than the norm of protection through treaties between states – 1919 Treaty of Neuilly, 1923 compulsory exchange of Greek and Turkish populations (Jaeger 2001). It is clear that in the period prior and during the phase of the League of Nations phase protection and sovereignty existed side-by-side – not antithetical to each other but co-existed indifferently. Bilateral treaties and agreements marked their normative separation. But the clash lies in the counter-intuitive nature of this co-existence because refugees were returned to territories of their persecution in contradiction to the normative meaning and intention of protection.

The nature of refugee protection changed in the period during the League of Nations, in 1933 to be more precise with the introduction of non-refoulement. Added into the 1933 Convention on the International Status of Refugees, this "served as a model for the 1951 Convention" (Jaeger 2001: 730). But everyone did not benefit from this principle. The 1938 Convention Relating to the Status of Refugees Coming from Germany states that, "Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy in law or in fact the protection of the German Government, and stateless persons not governed by previous Conventions or Agreements who have left German

territory after being established therein and who are proved not to enjoy in law or in fact the protection of the German Government."²⁷ This special convention, however, did not include the non-refoulement provision (Simpson 1938).

This temporary nature of protection of refugees shifted more dramatically in the period after the League of Nations and the fleeting period of the International Refugee Organization in the aftermath of the Second World War with the creation of the United Nations High Commissioner for Refugees (UNHCR) and the 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees. The establishment of a more permanent structure for the protection of refugees also shifted the meaning, intent and power of the international norms of protection itself. By the time the refugee convention was being drafted, it had a wealth of international normative standards and practices to draw from, especially that of human rights.

"The 1951 Convention was the first, and indeed remains the only, binding refugee protection instrument of a universal character. It was actually an instrument of rather limited intent, addressed particularly to the question of the status of refugees, not to solutions or to causes. While it traced its origins broadly to human rights principles, it was more about states' responsibilities than individuals' rights" (Feller 2001: 131). The 1951 convention draws on Article 14 (1) of the Universal Declaration of Human Rights, "Everyone has the right to seek and to enjoy in other countries asylum from persecution."²⁸ But the intent of the convention is towards what states should do and how they should go about assigning status to those who "owing to well-founded fear of being persecuted...is outside the country

²⁷ *Convention Concerning the Status of Refugee Coming from Germany*, adopted by the League of Nations on 10 February 1938, League of Nations Treaty Series, Vol. CXCI, No. 4461, page 59

²⁸ UN General Assembly Resolution on *Universal Declaration of Human Rights*, adopted on 10 December 1948, 217A (III)

of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...”²⁹

Together with replicating and particularizing the meaning and intent of previous norms of refugee protection, the 1951 Convention also reinforces the power of existing norms, especially of sovereignty, also thereby establishing its own power by association. “The 1951 Convention does not provide any detailed indication as to the manner in which the refugee definition is to be interpreted and applied—a matter which is therefore *left to the sovereignty of the State parties*. It follows that the application of the refugee definition is couched in very broad terms permitting different interpretations which may all be correct from a purely legal standpoint” (Bertrand 1993: 497).

The continuing cascading of the norms of sovereignty, protection of refugees and international protection can be inferred even before state adherence because of the 1951 Convention is an extension of the already accepted meanings, intentions and practices of the community of states. Though it gives states the capacity – *power to* – to act for and with those seeking asylum and grants capacity to asylum seekers to seek refuge, it also grants states control – *power over* – over refugees by deciding whether or not to grant asylum. This continuous dynamic nature of norm cascading leads to questions of legitimacy of existing as well as emerging norms.

(iii) Strengthening Existing Parameters of Legitimacy and Creating Legitimacy by Extension

As normative meaning and power are replicated and particularized in the dynamic processes of norm development and cascading, legitimacy – degrees, levels and types – is also a crucial influencing factor, and dynamic

²⁹ This is drawn from Article 1 A(2) of the United Nations *Convention Relating to the Status of Refugees*, 28 July 1951, 19 U.S.T. 6223, 189 U.N.T.S. 137

norm cascading also influences existing and emerging legitimacy of agents and structures – meaning it is also an outcome of norm cascading. It is an essential element in understanding not only the cascading of norms, but the parallel reinforcement of the intersubjective – individual and collective – identity of states. Though constructivist theories of norm development and constructivism itself include legitimacy as a significant element of normative international relations, legitimacy is reflected as inherent in the construct of norms – legitimacy lies in the fact that a norm is considered legitimate – and an agentic property.

This means that, as Finnemore (2009: 61) says, “Legitimacy can only be given by others. It is conferred either by peers, as when great powers accept or reject the actions of another power, or by those upon whom power is exercised.” This is only one aspect of legitimacy, whether in a society of persons or a society of states. It needs further conceptualization and there is yet “a convincing account of how legitimacy works,” as Ian Hurd (1999: 380) notes. And how it works is best studied in the international arena according to Franck (1990: 21): “if one is ever to demonstrate the existence of the legitimacy factor in securing obedience to norms, the global polis is where the elusive factor may be found, isolated and studied by social scientist,” especially considering the lack of a global sovereign authority which is not the case in a society of persons where the coercive sovereign always lurks in the background (Clark 2005).

But, without an overbearing sovereign, legitimacy is more than just the acceptance or rejection – positive or negative perception – of the actions of another. It is important to, in the first instance, recognize and account for the legitimacy vested in an agent – where does it come from if not from the existence of an authority, then from where? Political science and international relations scholars have come to accept that at the global level, legitimacy is “conferred upon international political institutions” (Claude Jr.

1966: 370). Some, like Hurd (2007), go as far as to say that sovereignty – legitimizing factor – from the domestic realm is transferred to international institutions such as the United Nations Security Council and other such global bodies. As theories of constructivism already claim (see chapter 3) the organizational platform is an important factor in the development and cascading of international norms, not just the norm entrepreneur. Hurd has theoretically and empirically proven this point.

Does each agent have the same degree of legitimacy to have and give? This brings into question the power of an agent itself. Having discussed the conflicted nature of norms and their power conflicts in the section above, are agents able to confer the same degree of legitimacy for different norms, especially those that are conflictual – for instance are norms of human rights as legitimate or perceived as legitimate as the norms of sovereignty and non-intervention? Are the same degrees of legitimacy conferred on emerging norms within the dynamic norm cascading model? Sometimes, there are different forms and degrees of legitimacy are conferred on the same norms. For instance, if democracy is considered the most legitimate form of government, government formation and governing, then, why is the “Kingdom” of Saudi Arabia not considered illegitimate? Why is a military coup not a legitimate way of claiming power? An interesting observation by a political adviser at ICRC, Andre Pasquier (2001: 3), may provide some answers to the origins of the perception of legitimacy as he reflects on the legitimacy of the organization. This is what he says:

“The ICRC occupies a unique place among humanitarian organizations. Founded well over a century ago, it has played a key role in the development of the modern concept of humanitarian action. Although a private institution, the ICRC has a humanitarian mandate conferred on it by States and sanctioned in international law. *Its legitimacy as a humanitarian agency is therefore soundly*

established. This legitimacy is upheld by three elements: the first is a *set of principles* that lend the ICRC's work its moral legitimacy; the second is a *legal framework*, made up today of the 1949 Geneva Conventions and their Additional Protocols of 1977, legal instruments drafted on the initiative of the ICRC and now enjoying universal acceptance; and the third is the *product of time*, the legitimacy acquired through activities conducted in the long term. Indeed, while the notion of legitimacy suggests the recognition of competencies, it is also directly linked to the way in which those competencies are exercised. Hence the importance for humanitarian action to affirm itself by a constant practice that guarantees moral legitimacy, which is by nature more subjective.”

Pasquier’s observations about the ICRC provide some insights into where legitimacy comes from. Unlike Claude Jr. (1966) who suggests that legality and morality are conflicting principles of the concept of legitimacy and do not on their own, or in combination exhaust the field; Pasquier indicates that it is both morality and legality that gives ICRC its legitimacy. His third element of time is an important element of the concept of legitimacy, which is not only characterized by the length of time that the ICRC has been in existence but also by the length of time the ICRC has carried out its mandate and how it has carried out its mandate in that time. The same observations could be made of the United Nations as an organization that has moral and legal and temporal legitimacy conferred by the states that are also its constituent members. It almost seems tautological. But if, as Pasquier notes, morality and legality are legitimizing, then where do the legitimacy of the structures of morals and laws come from?

Legitimization is not a one-time process; it is a product of time as Pasquier notes, but not only through continued compliance to norms – or mandate in the case of the ICRC – and adherence to stipulated practices of a norm –

moral or legal – but also because of the emergence of norms that are embedded in already legitimate normative structures and institutions. Legitimacy, like meaning and power, is strengthened and extended through the processes of replication and particularization. Perception is the operationalizing element in the process of replication, and process is the operationalizing element in the process of particularization. States are able to accept and adopt emerging norms because of its existing social meaning that is not different from their existing normative understanding or it is an acceptable extension of an existing meaning. The process(es) by which the perception is reinforced or extended is also important in this dynamic construction of normalization.

For instance, the World Commission on Dams may not have been entirely successful in garnering the necessary cascading support for intersubjective universal adoption or adherence. But after the disbanding of the WCD at the end of its stipulated period of work, the Dams and Development Project (DDP) took on the job of promoting and persuading states to conduct the business of dams in conformity with the WCD recommended regulations. This was because “the WCD...did ultimately produce a set of regulative recommendations based on decision making procedures, but these were embedded within a constitutive shift of considerable scope: locating the underlying basis for decision making about dams (and infrastructure in general) within a rights discourse rather than technoeconomic calculus” (Dubash 2009: 230).

By embedding the dams discourse within the rights framework, the issue of legitimacy was no longer just limited to being perceived from the institutional perspective but also from the normative perspective – it was no longer vested only in the agent but also drawing agents because of the normative legitimacy that already existed in the rights framework. The Commission, in

its final report, clearly situated the dams debate, its findings and recommendations as such:

“In moving forward the Commission recognizes that the dams debate is rooted in the wider, ongoing debate on development. The emerging global vision of equitable and sustainable development provides the foundation for the Commission’s findings and recommendations, as elaborated in its report of 2000. This foundation relates to:

- the framework of internationally accepted norms on human rights, the right to development, and sustainability
- global trends and the emerging development paradigm; and
- a rights based approach where recognition of rights and assessment of risks provides the basis for negotiated decisions on dams and their alternatives.”

It also called upon the globally accepted human development framework based on a growing number of norms, frameworks, conventions and standards: Economic development during the first half of the 20th century was dominated by an approach that emphasized harnessing and appropriating water and other natural resources for economic activities. Since the United Nations Charter (1945) and The Universal Declaration on Human Rights (1948), a globally accepted development framework setting out universal goals, norms, and standards has been gradually emerging. These declarations have been augmented over time by the Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1959), the International Covenant on Economic, Social, and Cultural Rights, (1966), the UN Declaration on the Right to Development (1986), and the Rio Declaration on Environment and Development (1992), among others. Together they form the current framework for sustainable human development.” Recognizing the existence of competing rights and normative

frameworks to apply to these situations, the WCD tackled any institutional legitimacy concerns by drawing attention to the normative, indicating the legitimacy of norms and their exertion on agents.

4.3. Applying the New Enhanced Framework

Having explored the conceptual and operational aspects of what constitutes the processes of the proposed mid-level framework of this thesis, this final section of the chapter sets out the guidelines (or manual) we have adopted in implementing this proposed framework in a three-stage procedure.

4.3.1. Stage 1: Synchronic Diagnostics

The first step is a simple symptomatic diagnostic – look and seek for the obvious – of the norm itself. Sticking to what has been defined as norm cascading in this thesis – meaning, power and legitimacy – the first step involves understanding:

- the meaning of the norm as it has been accepted
- powers – capacity to act and possible actions – generated by the norm
- perception of legitimacy of the norm

In the moment of creation and development of a norm, what did the norm mean? What is its scope? What powers does it allow/disallow? What particulars does it legitimize or not? The answers to this investigation comes from two sources – the first would be the norm instrument itself in whatever final form it was accepted by states, whether a convention, treaty, protocol, guiding principles or a resolution by one of the globally-accepted international bodies or institutions. This source needs to be unpacked for its language, structure and norm entrepreneurship. This first step is closely linked to the life cycle stage of norm emergence as it is at this stage that the dynamics of the norm's intended meaning, power and legitimacy is best observed through the process of persuasion, negotiations and lobbying (see

figure 1 above) because the phase between norm emergence and norm cascading is the synchronic period. It provides the best possible synchronic diagnostic space.

As explained in the previous chapter, it is in this initial phase of the life cycle that the framing (Barnett 1999) or objectivation (Berger and Luckmann 1996) of the norm takes place. The scope and characteristic boundaries – meaning – of a norm that are defined and negotiated here would provide a few answers in this first stage. To identify the power of the norm, the life cycle uses the tipping point of state support, acceptance and adherence as an enumerative indicator. This quantitative qualification can be used, but only as an additional validating measure. In the first instance to get a baseline reference for norm power, one can refer to the instrument where provisions or what states can and cannot do or how state must or must not act can be extracted. Identifying or extracting legitimacy at this stage is not easy as it is meshed in with state identities and the inherent notion of legitimate emergence of norms, almost as if legitimacy existentially precedes the emergence of norms. However for the purposes of this framework, the initial deliberations about the conceptualization and development of a norm could be used to assess perceptions of legitimacy amongst states.

The inferences from an examination of the norm instrument itself can be further padded with the second source, which is secondary literature that has already deliberated the respective norm in depth revealing its connotations, capacities and perceptions. The secondary literature is also helpful in instances where the norm instrument may be vague in its scope and provisions. It is also a way to validate and verify the accuracy of one's own assessment and evaluation of the norm. This first stage not only sets the baseline against which the next genealogical step is executed, but it also

marks the point to which the framework has to return in stage 3 where a re-evaluation is carried out.

4.3.2. Stage 2: Genealogical Exploration

The second stage is the core of the proposed framework. Having identified the basic scope of nature of the norm in question, the first step of this stage is finding answers to the following:

- What elements or provisions in the norm instruments are new (particularization)? Are these absolutely new or an extension of existing norms and normative frameworks?
- What elements or provisions are not (replication)? Which norms or normative structures are being replicated?

The elements or provisions are thematic indicators for the next step in this stage, which is a genealogical exploration. For instance, on 14 December 1960, United Nations General Assembly (UNGA) Resolution 1514 (XV) solemnly proclaimed “the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations.”³⁰ This resolution hinges, as the document states, on the understanding that “the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.”³¹ This was the creation of the norm of decolonization, which by 1960 was already an increasingly accepted international normative standard irrespective of whether states practiced or adhered to this norm.

However to estimate the depth of cascading of the norm of decolonization and its associated practices, one would have to draw out thematic clusters

³⁰ *Declaration on the granting of independence to colonial countries and peoples*, 14 December 1960, UNGA Res 1514 (XV)

³¹ *Declaration on the granting of independence to colonial countries and peoples*, 14 December 1960, UNGA Res 1514 (XV)

from the 1960 declaration. The clusters are not determined by any particular measure of legality, but more through a broad categorization of a norm's meaning and scope extracted in the first stage and assessing what and how much of the norm is a replication or a particularization of existing normative structures. In case of the declaration on decolonization, the thematic indicators could be sovereignty, international peace and security or peacebuilding, the fundamental norms of human rights or a more specific human right, such as the right of peoples to self-determination, and so on.

Each cluster will provide a point of departure for a genealogical analysis of the respective norm cluster. Conceptualized by Nietzsche (1887, 1913) and popularized by Foucault, the genealogical method not only provides a historical perspective to the development of an international norm and its cascading but does so in a non-linear, non-causal manner. In Nietzsche's (1887, 1913: 50) words: "The cause of the origin of a thing and its eventual utility, its actual employment and place in a system of purposes, lie worlds apart; whatever exists having somehow come into being, is again and again reinterpreted to new ends...the entire history of a "thing," an organ, a custom can in this way be a continuous sign-chain of ever new interpretations and adaptations whose causes do not even have to be related to one another but, on the contrary, in some cases succeed and alternate with one another in a purely chance fashion."

However this research is not looking for origins of norm clusters as much as it is seeking "to reestablish the various systems of subjection: not the anticipatory power of meaning, but the...play of dominations" (Foucault 1980: 83) whether in the normative structures itself or in the dialectical nature of agency, and most often both. This dynamism and complexity is revealed through a history that emphasizes "contestation," (Klotz and Lynch 2007: 31) "chance occurrences, fortuitous connections and reinterpretations"

(Price 1995: 86) that have sometimes led to change and at other times maintained order and as this research proposes, both.

This historical tracing entails understanding the dynamic nature and scope of cascading of a respective norm cluster over time as they may have evolved or regressed or may have even ceased to have been recognized as a norm in certain time periods in its own right or in relation to other norms or chosen clusters. Indicators of such significant historical moments or periods could be emergence or reinforcement of norms that relate to the cluster or the programmatic implementation of norms, and the debates and literature that follow from it. A cluster-based genealogical analysis not only demonstrates that norms are embedded in and interlinked to multiple existing norms, but also that life cycles of norms are not linear, and solely dependent on state acceptance and adherence. However, in a research with limited space and time, there needs to be a limited number of clusters, but enough to solidify the purposes of the research.

This thesis uses three clusters. A cluster approach also helps narrow the genealogical period of analysis. How further back a genealogy must travel depends on the nature and purpose of the research and the answer to the question: does half a millennia vs. half a century make a significant difference to the findings? In the case of this research, the period of genealogical exploration varies between 50 and 500 years in the preliminary testing phase that uses two cases. A set or pre-defined time period cannot be prescribed, but a researcher must define such time period as is feasible and valid to substantiate the research.

The genealogical approach here serves two purposes. Firstly it reveals the replication and particularization of norms and normative clusters through time and space. Secondly, in doing so normative instruments – ones preceded the norm under research – that enable such replication and

particularization are identified. This allows for an additional cascading indicator – the number of states that accepted the norm in a particular moment in time. The other indicator – perhaps harder to trace – would be finding programmatic evidence within, for instance, UN institutions such as UNDP, UNHCR or other multilateral organizations. At this stage, country-specific domestication of international norms through laws or programmes cannot be chosen as programmatic indicator. One of these additional cascading indicators concretizes the genealogical findings. This research uses the number of states as the indicator as it lays the groundwork for the final stage of the application of the proposed theoretical framework.

4.3.3. Stage 3: Unpacking Norm Internalization

This final stage links the framework back to the norm life cycle model. Having revealed the cascading of related and dominant norms replicated and particularized through norm clusters extracted from the norm being researched, stage 2 lays out a historical map of what all the previous periods of cascading means for the cascading of the new norm in the present, and how the norm being researched has actually cascaded in the present. So, if a state has not accepted a new norm but has accepted previous related norms and norm clusters, it can be assumed that this respective state has also accepted the new norm, at least in its replicated parts. This, in turn, means that certain parts of the norm can be considered to have cascaded more than the entirety of the norm.

To execute this stage 3, one or two states and their acceptance of previous norms against their acceptance or non-acceptance of the new norm have to be analyzed. Beyond signing and ratification of norms, internalization involves legalization through domestic laws or national policies, or programmatic implementation that sets achievable and measurable targets. The choice of the country case in stage 3 can be determined with the help of the cascading indicator of number of states used in stage 2. If programmatic

evidence was used as the cascading indicator in stage 2, one could choose a state that has accepted one of the norms from the clusters and analyze its acceptance and adherence, or lack thereof, against the same state's acceptance of the new norm.

Borrowing from Risse-Kappen, Ropp and Sikkink (1999) the dynamic norm cascading framework can be said to bring about a **first boomerang effect** leading to a second boomerang effect in the stage of state compliance and adherence influenced by national and transnational actors as suggested in *The Power of Human Rights*. The rethinking norm internalization stage enables a closer reevaluation of norm cascading from the international to the national sphere not just theoretically but also empirically, thereby shedding more light on norm cascading and its dynamics.

4.3.4. Change and Order

This more dynamic exploration of a norm's life cycle not only reveals the complexity of normative structures and its power on state agency and vice versa, but also leads this research to look at the dual existence and operationalization of change and order.

Change, though pertinent to the constructivist view of international relations, is two-faced. It would be difficult to ignore the fact that while increasing reach and reinforcement of social structures, the elaboration and integration of focused practices into existing norms and the shifting parameters of legitimacy and more may all indicate change; it also signifies that this change is actually "rooted in existing social structures, maintained by the power of practice and quite impervious to change" because constructivist power is also the power "to reproduce, discipline and police" (Hopf 1998: 180). Therefore change can be progressive and enabling as well as hegemonic and disciplining in the Foucaultian sense, thereby also impacting methodologically in rethinking the study of change in international relations.

A critical approach needs to be adopted in exploring the processes of replication and particularization as processes of change.

A dynamic norm cascading allows this research to categorize cascading as relevant to the proposed processes of replication and particularization – cyclical norm cascading and catalytic norm cascading. The first is characteristic of order while the latter demonstrates change or shifts in normative structures. In replicating the meaning, power and legitimacy of existing norms, the emerging norms are reinforcing the normativeness of the existing understanding of that which is accepted thereby creating a cyclical cascading effect, which demonstrate the ongoing process of normalization and continuity and continuous strengthening of order. Meanwhile, the extension of existing meaning, power and legitimacy through particularization leads to catalytic cascading, which demonstrates change.

The co-habitation of international order and change also reflects and reinforces an important feature of normative international relations – a hierarchy of norms. There are fundamental norms that lay the foundation to normative international relations, such as sovereignty, peace and security, human rights to name a few. It is the tension between these fundamental norms that cause the, sometimes, conflicted compliance with and adherence to, or lack thereof, these and other norms in the hierarchy. It is not the purpose of this research to elaborate on this hierarchy but it is worth flagging here for future further research. Understanding norm cascading in such a dynamic manner also has far reaching implications for understanding international policy development, how it works and how to improve the processes involved in international political institutions, and perhaps gain better state acceptance and adherence.

Change and progress in international relations seldom means to “climb towards the top, but mainly away from the abyss,” to quote Emmanuel Adler

(1991). Change is not always a dramatic big bang; sometimes it is slow, gradual and an ongoing process. This process is revealed in the dynamic norm cascading framework proposed in this research. In the following chapters, this framework will be tested, first in a preliminary phase of two cases, followed by an in-depth testing of UN Guiding Principles on Internal Displacement.

CHAPTER 5.

PRELIMINARY TESTING OF THE ENHANCED MODEL

The previous chapter set out a revised life cycle model that aims to reveal a more critically insightful and dynamic development of international norms. Before studying and examining the development and life of the Guiding Principles on Internal Displacement using the new model, it will be first tested in this chapter using two cases – the 2000 UN Security Council Resolution (UNSCR) 1325, and the 1993 Chemical Weapons Convention. Preliminary testing helps in three ways: it demonstrates how the renovated life cycle model can be applied, it reveals any strengths, weaknesses or difficulties in applying such a model, and it also provides an opportunity to adjust or rectify the model. This chapter moves from one case study to the next, starting with the UNSCR 1325. Each case is examined according to the three overall stages of the developed model, as formulated in previous chapter.

There are several reasons for selecting these two test cases. Firstly, the cases present different types of international norms and normative instruments, which make for robust testing of the proposed model, and hypothesis. While the first is a UN Security Council resolution, the second is a treaty instrument. It examines the extent to which the model can be used to test the development and spread of any type of international norm. Secondly, they touch on different areas of international relations, while one relates to issues on women and peace, gender equality, and humanitarian law, the other relates to the non-use of chemical weapons. This also adds to the robustness of testing as the model and hypothesis can then be applied to different normative spheres, and across norm ecosystems demonstrating the dynamic nature of norm development and life.

Thirdly, the test cases chosen are theoretically of varying degrees of legal obligation and adherence. Many scholars have argued that the degree of legality of an international normative instrument bears little weight on its application or realization, and it is more a question of perception and accepted understanding within the international community (Kratochwil 1989; Finnemore 2000; Abbott, Keohane, et al. 2000; Whitman 2010). This thesis will not delve into the impact of the legal nature of a norm on its development or life, except to note its legal standing within the international community as one of the potentially relevant factors. Meanwhile, it also has to be noted that each preliminary testing case will not unpacked to its entirety owing to lack of space. Emphasis will be laid on learning how to operationalize the model effectively, and examine the cases to a reasonable extent.

5.1. CASE I: UN Security Council Resolution (UNSCR) 1325, 2000

Policy and development practitioners, human rights and women's activists, national and international non-governmental organizations and countries across the world, and the UN itself have hailed the United Nations Security Council Resolution (UNSCR) 1325 as a milestone, a historic landmark (Pratt and Richter-Devroe 2011), not only for women all over the world, but also for the progress of human rights, human development and peace and security. It marked the first time that the UN Security Council dealt specifically with gender issues and women's experiences in 'conflict' and 'post-conflict' situations and their contributions to conflict resolution and prevention (Cohn 2008).

Adopted in October 2000, UNSCR 1325 brought women's rights and related issues, specifically with respect to peace and security processes in conflict and post-conflict societies, to the forefront of international relations and practice, coming as it did from one of the highest international political

institutions – the UN Security Council (UNSC). It is considered one of the most authoritative international normative instruments in the area of women and peace. However, many practitioners and scholars have criticized the grit and effectiveness of the resolution. The next few subsections will investigate the normative depth and significance of UNSCR 1325 through the reformulated life cycle model to understand better what it means of and by itself, and what it means for international normative change and progress.

5.1.1. Stage 1: Synchronic Diagnostics of UNSCR 1325

5.1.1.1. From Entrepreneurship to Creation

“Members of the Security Council recognize that peace is inextricably linked with equality between women and men. They affirm that the equal access and full participation of women in power structures and their full involvement in all efforts for the prevention and resolution of conflicts are essential for the maintenance and promotion of peace and security.”³² This statement by then President of the UNSC, Ambassador Ankur Chowdhury, on 8 March 2000 provided the much-needed boost to the already simmering issue of the role of women in peace and security.

Since 1998, organizations working on women’s issues around peace and security were seeking such a normative entry point because of the lack of means and ways to implement, actualize and realize what was to be achieved following the 1995 Beijing Platform for Action. Ambassador Chowdhury, and several NGOs – especially the Women and Armed Conflict (WAC) Caucus – working on and promoting women and peace issues could be considered the norm entrepreneurs in this case. At one of the many events organized by WAC to advocate for women and peace issues,

³² UNSC (2000), Peace Inextricably Linked with Equality between Women and Men says Security Council, in International Women’s Day Statement, *Press Release SC/6816*, <http://www.un.org/press/en/2000/20000308.sc6816.doc.html>, accessed on 15 February 2015

Security Council members were invited.³³ Delegations from Bangladesh, Canada, China, Macedonia, the Netherlands, Russia, the United Kingdom, and the United States accepted the invitation – that is four out of five of the permanent members. It was at this meeting that Ambassador Chowdhury made an open declaration that “reinforced his support for the role of women in peace efforts. He also informed the women that he was working with other colleagues to devote a session of the Security Council to discussing the roles of women in armed conflict and peace and requested their help in garnering support from the fourteen other Security Council members on the issue” (Hill, Aboitiz, and Poehlman- Doumbouya 2003: 1257).

Ambassador Chowdhury and the NGO members did not have to wait long for this support. The formation of a NGO Working Group on Women and International Peace and Security led to more targeted persuasion for two specific objectives: to encourage women’s participation in peace agreements, and to push for the convening of a special session of the Security Council on women, peace, and security (Hill, Aboitiz, and Poehlman- Doumbouya 2003). The UNSC special session was finally called for in October 2000 under the presidency of Namibia held by Ambassador Martin Andjaba, which led to the tabling and adoption of the UNSC Resolution 1325 (2000) on Women and Peace and Security. This condensed period of a few months in 2000 witnessed the emergence, the persuasion, unanimous adoption, and acceptance/cascading of the norm that is considered debatably transformative.

The legitimacy of the UNSC will not be deliberated here, except to note that it is accepted in the global community as a body of exceptional importance, and its resolutions carry the same weight. This authority and power is vested

³³ Informal meeting between NGOs and UNSC, started in 1993 by Diego Arria, Venezuela’s ambassador to the United Nations when he invited members of the UNSC to listen to the views of a Bosnian priest over coffee. This has since come to be known as the Arria Formula Meeting. The Arria Formula Meetings are a discursive space that, though informal, feeds the formal discursive processes within the UN.

in the UNSC through articles 24 and 25 of the UN Charter³⁴. They not only confer the UNSC with responsibility for and authority on international peace and security, but also state that it is the duty of all members of the UN to accept and carry out all decisions made by the UNSC. Therefore in the case of UNSCR 1325, as is with any UNSC resolution, once adopted, its cascading is a given, at least in theory, and especially through programmatic implementation at the national or local levels. This means that the cascading of UNSC resolutions are incumbent upon its adoption at the international level, and not on its “tipping over” by the individual acceptance of a critical mass of states. The analysis of the country case of Somalia in stage 3 will reveal this cascading nuance. However, first to complete the synchronic examination the following sub-section explores the normative foundations of the Women, Peace and Security resolution.

5.1.1.2. UNSCR 1325 and its Normative Foundations

UNSCR 1325 links women, peace and security into a succinct global commitment like no other document before. As a succinct 18-point landmark document, it gave practitioners, researchers and other professionals in the fields of peace, security, and gender issues the reinvigorating boost they needed in the post-Beijing years to keep their overlapping agendas moving forward. It is also the only resolution of its kind to be adopted by the UN Security Council.

The resolution is normatively hinged on four pillars – prevention, protection, participation, and relief and recovery. The Security Council introduced these pillars retroactively in an attempt to assess the progress of the programmatic implementation of the resolution in a standardized way.³⁵ The four pillars have, however, also come to be accepted as the most common thematic understanding of UNSCR 1325. The normative purpose of the resolution

³⁴ *Charter of the United Nations*, adopted on 24 October 1945, 1 UNTS XVI

³⁵ Paragraph 17 of UN Security Council Resolution S/RES/1889 (2009), adopted on 5 October 2009

was to boost the role of women internationally as agents of peace, preventers and resolvers of violence and conflict, and thus on both counts needing greater and deeper participation in the various dimensions of peacekeeping, peacebuilding, conflict prevention and conflict resolution.

Portraying women as peacekeepers, peacebuilders with ability to prevent and resolve conflicts was a much welcome normative development through the pillars of prevention and participation. However, it reflects a top-down imposition of the agency of women that is symbolic and limited to political participation and decision-making in conflict and peace processes. Ellerby (2013: 456) highlights that “women’s physical presence at formal talks is not enough to guarantee (en)gendered security, especially when there are norms and strategies used to marginalize their activities and ideas.” Others like Bjarnegard and Melander (2013) warn against the oversimplification of the relationship between women’s participation in parliament and peace.

Though the resolution makes an attempt to highlight women’s engagement in peace and security, it is overshadowed, some criticize, by an emphasis on their vulnerability and victimhood through the remaining two pillars of protection and recovery and relief, starting from the opening paragraph of the resolution itself:

Recalling its resolutions 1261 (1999) of 25 August 1999, 1265 (1999) of 17 September 1999, 1296 (2000) of 19 April 2000 and 1314 (2000) of 11 August 2000, as well as relevant statements of its President, and recalling also the statement of its President to the press on the occasion of the United Nations Day for Women’s Rights and International Peace (International Women’s Day) of 8 March 2000 (SC/6816)

Resolutions 1261 (1999) and 1265 (1999) both relate to children in armed conflict, while the latter, 1296 (2000) and 1314 (2000), relate to protection of civilians in armed conflict. Situating women in this background by choosing to recall these resolution in the very first instance portrays women as weak, vulnerable and needing protection. The perception of women as equal actors in peace, security and development is only raised in paragraph two with reference to the 1995 Beijing Declaration and Platform for Action and the outcome of the review five years later in Beijing +5 called Women 2000: Gender, Equality, Development and Peace for the Twenty First Century. But even in these discursive documents the primary identity of women is that of victims.

A focus on the protection of women, mostly in association with children, has had a special place in international humanitarian and human rights laws for centuries. And despite a debatable overemphasis on ‘women as victims,’ it would only thus seem prudent for resolution 1325 to include protection, and relief and recovery as important pillars in the norm creation of women, peace and security, thereby also fitting into existing normative frameworks. The following section extracts three norm clusters within which the resolution is embedded.

5.1.1.3. Embedding in Existing Normative Frameworks and Extracting Clusters

Though a landmark resolution, the 18-point international commitment is not new. The recalling a few of the earlier such resolutions and treaties relating to protection of women, elimination of discrimination against them, and reaffirming their participatory role are indicative of this fact. There are also more generic – non-gender specific – international commitments of prevention of, and protection from violence that also apply to women, such as the UN Charter, Universal Declaration of Human Rights, the Geneva Conventions, and many more treaties and resolutions.

Nevertheless UNSCR 1325 is significant in scope and purpose in its own way. It is an important extension of the existing international normative structures that apply or can apply to women, and their role in promoting and maintaining peace and security. Of the 18 points, nearly half refer to some aspects of peacekeeping and peacebuilding. For instance, the first provision in the resolution calls for an increase in the participation of women in decision-making levels in conflict resolution and peace processes. Meanwhile, the resolution also emphasizes the need for training member states on the importance of involving women in peacekeeping and peacebuilding. Further below in the list of provisions is an emphasis on the responsibility of states to prosecute those responsible for genocides, war crimes and crimes against humanity; and specific consideration for the needs of male and female ex-combatant in DDR.

A few of other paragraphs in UNSCR 1325 refer to international humanitarian laws and practices, such as the call to parties of armed conflicts to take special measures to protect women and girls against violence, or the call for respect of the humanitarian nature of refugee camps with particular emphasis on the needs of displaced women and girls, and so on and so forth. Meanwhile, the overarching scope of the resolution aims at gender equality, or at women's equality, in the limited sense of the term gender, within the peace and security framework.

This brief synchronic and content examination of UNSCR 1325 reveals that its meaning, power and legitimacy – construct and cascading – situates the normative framework of women, peace and security within broader ones. It would seem that women, peace and security is being embedded into larger existing international normative frameworks or clusters, through reaffirmations or replication and extension through particularization of

accepted norms and practices, as will be demonstrated in the genealogical cluster examination below.

The emphasis on protection of women is based in the replication of existing international humanitarian standards and practices. Meanwhile, much of the focus on participating in UNSCR 1325 bears a liberal peacebuilding shadow. The overall agenda of gender equality and gender balancing also has long and deep normative roots. Therefore the three norm clusters extracted here for the next stage of genealogical exploration of UNSCR 1325 are: **humanitarian protection of women, liberal peacebuilding, and gender balancing**. A exploration of these clusters provide a better genealogical grasp of the meaning, power and legitimacy that has enabled or influenced the construct and cascading of the Women, Peace and Security resolution.

5.1.2. Stage 2: Re-understanding UNSCR 1325 – A Genealogical Approach

5.1.2.1. Cluster 1 – Upholding Humanitarian Law

Timeframe: 1863-1949

During wartime, if a woman cannot find sustenance in her own home due to the capture of someone, she is free to go to another's house and will be blameless. This may seem like an odd legal provision, but it is from one of the first known codes of laws written in any human civilization – the Hammurabi Code. Code 134 is the only mention of war and women in the Code of 282 provisions. The few other provisions related to women and their culpability is situated in various peacetime situations. Fractionally humanitarian in nature, code 134 reflects the status of women in Babylonia, and the complete disregard of their wartime need for protection of any kind. However, as the nature and laws of war changed, so did the accepted standards of behavior during war, including the protection of persons in or affected by war – armed and unarmed.

5.1.2.1.1. The Honour in Early Humanitarian Laws

“...The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit.”³⁶ As contemporary as this rule of war may seem, it dates back to 1863, and the American Civil War. Drafted by Prof. Francis Lieber, the Lieber Code is said to be the foundation of International Humanitarian Law. This early recognition of the protection of unarmed citizens or civilians during war is indicative of two things – firstly, that women were afforded humanitarian protection without special mention from the earliest respective laws and practices, but secondly, that women were also imposed with the unique, if perhaps stigmatizing, social status of upholding personal, familial and societal honor.³⁷

The recognition of honor as something to be spared in battles and wars is considered specifically aimed at protecting women against war violence of a sexual nature. This is true even today, and has much to do with the perception of women in times of peace, as scholars such as Olujić (1998: 31-32) state: “War rapes in the former Yugoslavia would not be such an effective weapon of torture and terror if it were not for concepts of honor, shame and sexuality that are attached to women’s bodies in peacetime.”

5.1.2.1.2. Trapped in a Biological Construct

Protection of women during times of war continued through the nineteenth and twentieth centuries too. However, the perception of the needs of women was not always only through a biological lens. With the birth of the ICRC, and that of international humanitarian law as we know it today, women “had had the same general legal protection as men,” says Françoise Krill (1985:

³⁶ United States of America, Article 22 of *The Lieber Code: Instructions for the Government of Armies of the United States in the Field*, 24 April 1863

³⁷ For more on the stigmatizing construction of honour, see Gardam, J. (1997) Women and the Law of Armed Conflict: Why the Silence? *International and Comparative Law Quarterly*, Vol. 46, p. 57

337). If they were wounded, women were protected by the provisions of the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field; if they became prisoners of war, they benefited from the Regulations annexed to the Hague Conventions of 1899 and 1907 (Krill 1985).

In 1929 however, the protection of women, once again, became more specified to their needs in biological terms. Articles 3 and 4 of the 1929 Geneva Convention relative to the Treatment of Prisoners of War state that, “prisoners of war are entitled to respect for their persons and honour. Women shall be treated with all consideration due to their sex.” And “Differences of treatment between prisoners are permissible only if such differences are based on the military rank, the state of physical or mental health, the professional abilities, or the sex of those who benefit from them.”³⁸

The biological focus on the humanitarian protection of women remains intact to this day through the four 1949 Geneva Conventions adopted in the aftermath of World War II, and the ensuing two Additional Protocols to the Geneva Conventions. They contain a score and more provisions that relate specifically to the protection of women. Though scholars such as Krill (1985) and others describe it as a feature of equality, this research contends that there is a tension within international humanitarian law, specifically in the Geneva Conventions, in trying to balance the special protection needs of women and reiterating non-discrimination in general humanitarian protection. While there are provisions that emphasize that the execution of humanitarian treatment should be “without any adverse distinction founded on sex...”³⁹ and treatment of women “as favorable as that granted to men,”⁴⁰

³⁸ Articles 3 and 4 of the 1929 *Geneva Convention relative to the Treatment of Prisoners of War*

³⁹ Article 12 of Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31; Article 12 of Geneva

provisions in the Conventions also emphasize that “women shall be treated with all the regard due to their sex.”⁴¹

The humanitarian protection of women has increasingly laid more emphasis on the treatment of women with due regard to their sex, such as the needs of pregnant women, special treatment for mothers and children, ensuring the protection of women against sexual violence (Gardam 2010), and other similar provisions.

5.1.2.1.3. An Analysis

This genealogical exploration of women in international humanitarian law demonstrates that the identity of women as victims was a construct of the early twentieth century. It is this meaning, power and legitimacy together with existing humanitarian normative framework that is reinforced through UNSCR 1325.

However contested or fraught the identity of women are in international humanitarian law, they have been under its protection for more than a century. It is this protection, and their victimized identity that is replicated in the millennial resolution as well. Though women are primarily portrayed as victims within the purview of international humanitarian law, they are

Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85; Article 16 of Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135; Article 27 of Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287; Article 75 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3; Article 4 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 UNTS 609

⁴⁰ Article 14 of Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135

⁴¹ Article 12 of Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31; Article 12 of Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85; Article 14 of Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135

projected as proponents and agents of peace in the normative structures of peacekeeping and peacebuilding.

5.1.2.2. Cluster 2 – Reaffirming Faith in Liberal Peace

Timeframe: 1975-1995

The beginning of the post-Cold War era brought with it shifts in international peace and conflict norms. It was no longer limited to maintaining a ceasefire, but also extended to peacebuilding – the action to identify and support structures, which will tend to strengthen and solidify peace in order to avoid a relapse into conflict.⁴² This definition in Boutros Boutros Ghali's *Agenda for Peace* in 1992 set the tone for the practice of liberal peacebuilding, which included among other structural reforms institutionalizing democratic governing systems, elections, rule of law, and people's participation in it and market-oriented economics for better growth and development (Tschirgi 2004; Newman, Paris and Richmond 2009; Paris 2010).

5.1.2.2.1. Women and Liberal Peace

Scholars such as Chinkin and Charlesworth (2006: 938) note an important omission in the origins of the liberal peacebuilding agenda: "One striking omission for these accounts was the impact on women and their role in the processes of peace-building." This omission was rectified, they claim, in Security Council Resolution 1325 on Women, Peace and Security. This is not an accurate understanding of women and their role as proponents of peace. The link between women and peace goes back decades, even before 1992 and the official promotion of norms and practices of liberal peace.

⁴² Report of the UN Secretary General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-keeping*, A/47/277 - S/24111, 17 June 1992. *An Agenda for Peace* was adopted by resolution of the UN General Assembly on 8 October 1993, A/RES/47/120B

As early as 1975, at the World Women's Conference in Mexico, a few resolutions linking women and their role and impact on peace were adopted: Women's participation in promoting world peace and international cooperation; Women's participation in the strengthening of international peace and security and in the struggle against colonialism, racism, racial discrimination and foreign domination; and Women's contribution to world peace through participation in international conferences.⁴³ This is, however, not to say that there were no links between women and peace before 1975 but that this research will limit the genealogical examination.

In fact, the resolutions adopted in Mexico recall and reaffirm related resolutions adopted in the early 1970s and prior at the UN General Assembly or Security Council. For instance, the resolution on Women's Participation in Promoting World Peace and International Cooperation, adopted in Mexico, recalled the UN General Assembly resolution 3010 (XXVII) of 18 December 1972 that recognized the importance of women's increasing contribution to the development of international peace and cooperation. The latter that was unanimously adopted without a vote in 1972 was further reiterated through replication in the former at a conference that was attended by 133 member states.

World leaders at Mexico recognized women's normative role in promoting and maintaining peace and security, and that more needed to be done to strengthen their capacities and responsibilities: "A number of speakers felt that as a result of the new international order⁴⁴ and the internal structural

⁴³ Report of the World Conference of the International Women's Year, Mexico City 19 June-2 July 1975, E/CONF.66/34

⁴⁴ The new international order is in reference to the adoption of the UNGA resolution on the Programme of Action on the Establishment of a New International Economic Order, 1 May 1974, A/RES/S-6/3202. This resolution set the normative framework for international economic relations between nations for better lives for all peoples. The Declaration adopting the new world order stated that "the Establishment of a New International Economic Order...[would] make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations..." UNGA

changes as well as of their traditional role and functions, particularly those related to parenthood, the care of children and the family, women had developed qualities that made them particularly well suited to participate in efforts to achieve a better life for the weak and the helpless, and to strengthen peace...⁴⁵

5.1.2.2.2. Making Stronger and Deeper Links

The Mexico conference also laid the groundwork for the United Nations Decade for Women from 1976, aimed at 'Equality Development and Peace.' This decade further highlighted women's role in, and work for peace as a few of the resolutions adopted at the 1980 World Women's Conference show, such as the role of women in the preparation of societies for a life of peace.⁴⁶ The late 1970s and early 1980s were not only about linking women and peace but also about interlinking peace and development, which was also reflected at the 1980 World Women's Conference at Copenhagen: "On the assumption that the three main objectives of the Decade – Equality, Development and Peace – are closely interlinked with one another, the purpose of this Programme of Action is to refine and strengthen practical measures for advancing the status of women, and to ensure that women's concerns are taken into account in the formulation and implementation of the International Development Strategy of the Third United Nations Development Decade."⁴⁷

The next World Women's Conference in Nairobi in 1985 echoed similar sentiments.⁴⁸ The promotion and enhancement of women's role in efforts to

Declaration on the Establishment of a New International Economic Order, A/RES/S-6/3201, 1 May 1974

⁴⁵ Ibid.

⁴⁶ Report of the World Conference of the United Nations Decade for Women: Equality Development and Peace, Copenhagen 14-30 July 1980, A/CONF.94/35

⁴⁷ Ibid.

⁴⁸ Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, 15-22 July 1985, A/CONF.116/28/Rev.1

promote and maintain peace at national and international levels continued at the fourth and last World Women's Conference in Beijing in 1995 that adopted a new declaration and platform for action. The platform for action identified 12 areas through which women's national and international status could be improved. Cutting across political, economic and social spheres, strategic objectives and actions were laid out in poverty, education, health, violence against women, armed conflict, economy, power and decision-making, institutional mechanisms, human rights and more.

5.1.2.2.3. An Analysis

It is clear from the brief examination that firstly women played a significant role not only in building peace, but also in effecting equitable growth, and development through participation, inclusion and other liberal norms. Secondly it is also evident that links between women and peace were not first established in 2000 through UNSCR 1325. It has been deeply rooted and recognized since the 1970s, with emphasis on the increasing role of women in decision-making, democratic institutions, and better economic conditions for women. These are the fundamentals of liberal peace as well. UNSCR 1325 reiterates some of these normative links, its meaning, power and legitimacy between women and liberal peace, with a particularization in the specific context of peace and security in conflict and post-conflict phases.

5.1.2.3. Cluster 3 – Balance of Genders: Discrimination vs. Difference

Timeframe: 1915-1995

One of the significant challenges women face even today is that of equality. The problematique arises in the tension between promoting gender equality theoretically and pragmatically, and eliminating differences between the sexes yet upholding essential differences, especially in the context of peace and security. This is compounded by the normative misconceptions attached to the term 'gender,' and its synonymity with women often translated as the

weaker sex, such as provision in international humanitarian law (Barrow 2010), also highlighted in the first cluster above.⁴⁹ Barrow (2010) and others, especially Chantal de Jonge Oudraat (2013: 613), claim that UNSCR 1325 has responded to this issue with its central underlying theme of gender balancing, which “has to do with equal rights and the number of men and women engaged in international peace and security policies”.

5.1.2.3.1. Beginning the Balancing Act

However the problematiqué and the response are not entirely unique to the peace and security context, or UNSCR 1325. The “gender” question has been an ontological and epistemological tug of war between eliminating discrimination and highlighting differences since women began fighting for their rights. And a balancing act has been the response in one form or another through the centuries.

Political recognition within a governing realm was the beginning of women’s struggle for equality. Fraser (1999) credits the French feminists with starting the “debate about women” (*querelle des femmes*), and to Mary Wollstonecraft's book, *Vindication of the Rights of Women*, in the English-speaking world, which was in response to the promulgation of the natural-rights-of-man theory. Stanton’s gender balancing proposal was highlighted in many suffragist meetings nationally, and later internationally. Soon the international meetings revealed the need for many other women’s issues to be addressed, such as participation and inclusion through women representation in government and government bodies (Fraser 1999).

An international gender balance was struck with the Covenant of the League of Nations in 1919 at the end of the First World War. Women are mentioned

⁴⁹ Also see: Gardam, J. (1992) A Feminist Analysis of Certain Aspects of International Humanitarian Law, *Australian Yearbook of International Law*, Vol.12, pp.265-278; Gardam, J. (1997) Women and the Law of Armed Conflict: Why the Silence? *International and Comparative Law Quarterly*, Vol. 46 No.1, pp. 55-80

thrice in the Covenant, as having equal opportunity to League positions, fair and humane labour regulations, and monitoring and execution of regulations concerning trafficking in women and children.⁵⁰ And so it was that women's rights came to be sown in international normativity, with the exclusion of the nationality of married women.⁵¹

5.1.2.3.2. The UN-balancing of Women's Issues

The status of married women was also resolved with the birth of the United Nations, and the demise of the League of Nations. The Charter of the United Nations, and the Universal Declaration of Human Rights (UDHR) reflected the equality of women in the preambles of both documents and four separate articles of the Charter. The equality of married women to that of married men is stated in Article 16 of the UDHR.⁵² However, the creation of a Commission on the Status of Women (CSW) was seen by some as disturbing the balance because it segregated women's rights and issues from the work of the Commission on Human Rights (CHR) (Skard 2008), and perhaps even placed women's rights subordinate to human rights (Eisler 1987; Bunch 1990).

This was also evident in the number of conventions promoted by the CSW pertaining to specific women's rights, such as: the Convention on the Political Rights of Women, adopted by the General Assembly on 20 December 1952, the Convention on the Nationality of Married Women, adopted by the Assembly on 29 January 1957, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

⁵⁰ The relevant articles in the 28 April 1919 *Covenant of the League of Nations* are Article 7(3), Article 23(a) and Article 23(c) respectively.

⁵¹ One of the substantial issues that women's groups could not convince the Leagues of Nations to support was the nationality of married women, which in an indirect way reflected similar concerns as the issue of self-determination of nations colonized by the great powers at the time. The League's solution was to take upon itself the protection of people from colonized territories and "appoint various nations as guardians" (Barkin and Cronin 1994).

⁵² *Universal Declaration of Human Rights*, adopted by the UN General Assembly on 10 December 1948, 217 A (III)s

adopted on 7 November 1962, and the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages adopted on 1 November 1965.

The UN itself recognized this systemic flaw: “Although these instruments reflected the growing sophistication of the UN system with regard to the protection and promotion of women's human rights, the approach they reflected was fragmentary, as they failed to deal with discrimination against women *in a comprehensive way*...”⁵³ The UN General Assembly moved to balance the situation with a 1963 resolution⁵⁴ that proposed the drafting of a declaration on the elimination of discrimination against women that brought under a single document all laws that grant women equal rights, including all laws that would pertain to all human beings irrespective of sex.

Close to two decades later, the Convention on the Elimination of Discrimination against Women (CEDAW) was adopted. Whether or not CEDAW equates women's rights with human rights, a few scholars claim that it is definitely a document that deals “with women's (read secondary) rights, not human rights” (Eisler 1987; Bunch 1990).

5.1.2.3.3. An Analysis

This tension in the meaning, power and legitimacy of the gender balance problematique is replicated and particularized in UNSCR 1325, and the context of peace and security. The desire to enable gender balance is clear in the DDR provision in paragraph 13 that encourages that special needs of both men and women ex-combatants be considered in DDR measures, including the needs of their dependents. However, in other instances the intention is constrained by generations of socialization of stereotypes.

⁵³ United Nations, Short History of CEDAW Convention, available online: <http://www.un.org/womenwatch/daw/cedaw/history.htm> (emphasis added), accessed on 15 February 2015

⁵⁴ UN General Assembly, *Draft Declaration on the Elimination of Discrimination against Women*, 5 December 1963, 1921 (XVIII)

Paragraph 10 calls for the protection of women and girls against gender-based violence, and not men. And though the UN would like to promote women in field-based operations, and include gender consideration in UNSC missions, it hesitantly encourages an increase in the number of women in peacekeeping missions by urging, “*where appropriate*, a gender component”⁵⁵ demonstrating reluctance rather than a resonance towards the balance of genders.

5.1.2.4. Overall Cluster Analysis

The genealogical examination of UNSCR 1325 demonstrates the dynamic nature of norm construction and cascading. To add to the discursive perspective proposed in the revised model, numerical validation of state acceptance as used in the original model is added in this section to offer a richer analysis. To take the humanitarian cluster, for instance, the number of state parties stood at over 50 states and European kingdoms for the original 1864 Geneva Convention on the Condition of the Wounded.⁵⁶

The original convention was updated in 1906 and state parties remained at 52, which then increased to 60 state parties when it was updated in 1929.⁵⁷ Meanwhile the prisoners of war Geneva Convention of the same year had 53 state parties.⁵⁸ By the late 1940s, humanitarian protection of men and women was not the only global concern; it also included international peace, security and equal rights for all. The drafting and acceptance of the UDHR, UN Charter, and four Geneva Conventions laid the groundwork for this. Though not legally binding, the UDHR was ratified through a proclamation by the General Assembly on 10 December 1948 with a count of 48 votes to none with only 8 abstentions.⁵⁹ As for the UN Charter and Geneva

⁵⁵ *UN Security Council Resolution 1325 [on women and peace and security]*, adopted on 31 October 2000, S/Res/1325 (2000)

⁵⁶ ICRC Treaties and Documents Database

⁵⁷ ICRC Treaties and Documents Database

⁵⁸ ICRC Treaties and Documents Database

⁵⁹ UN Association, Q&A about the Universal Declaration of Human Rights

Conventions, 196 states are party to these treaties.⁶⁰ This further demonstrates the gradual cascading of norms, including those specific to women that were replicated and particularized since 1864. Meanwhile, acceptance of the extensions of the Geneva Conventions in the Protocols that were adopted in the late 1970s and early 2000s varied. Additional Protocols I, II and III had 174, 168 and 72 state parties respectively.

Cascading of norms relating to women and peace can be validated through the resolutions, actions plans and programmes adopted at the four World Women's Conferences between 1975 and 1995; these garnered good support. There were 133 member states present at the 1975 Mexico Conference.⁶¹ This increased to 145 member states at the Copenhagen Conference in 1980.⁶² This is a reflection of the growing global commitment to various women's issues, including those related to peace and security.

Meanwhile, CEDAW that came into effect in 1981, tying together an array of international norms as specifically applicable to women, fared well with 189 state parties.⁶³ In Nairobi in 1985, a forward-looking strategy for the future of women to the end of the century was adopted by 157 participating member states by consensus.⁶⁴ The 1995 Beijing Conference was claimed to be the most successful of the four World Women's Conferences with a substantive declaration and action plan adopted by 189 member states followed by a UN General Assembly endorsement.⁶⁵ Then came the 1998 Rome Statute criminalizing, among three major crimes, many related to those against

⁶⁰ ICRC Treaties and Documents Database

⁶¹ UN Women (2000) *The Four Global Womens' Conferences 1975 – 1995: Historical Perspective*, published by the UN Department for Public Information

⁶² UN Women (2000) *The Four Global Womens' Conferences 1975 – 1995: Historical Perspective*, published by the UN Department for Public Information

⁶³ UN Treaty Collection Database

⁶⁴ UN Women (2000) *The Four Global Womens' Conferences 1975 – 1995: Historical Perspective*, published by the UN Department for Public Information

⁶⁵ UN Women (2000) *The Four Global Womens' Conferences 1975 – 1995: Historical Perspective*, published by the UN Department for Public Information

women and girls. This was signed and ratified by 123 state parties.⁶⁶ And UNSCR 1325, as is with any UNSC resolution, is legally binding on all UN member states by virtue of being a state party to the UN Charter.

UNSCR 1325 brings together norms, normative principles and practices of at least 200 years together. It reiterates, re-endorses and further cascades these norms. The qualitative analysis shows, through a cluster approach, how normative meanings, power and legitimacy have cascaded – in whole, or part – over the years. The analysis looked at some of the normative instruments and structures in which the resolution is embedded to reveal the dynamic nature of norm cascading. The additional quantitative evidence – focused on state acceptance alone – validates norm cascading, though perhaps in a more linear way.

5.1.3. Stage 3: Rethinking Norm Internalization – Somalia

Though UNSCR 1325 has normative lineage and was hailed as historic, its realization through domestic internalization remains wanting as reviews have shown. In a review of the implementation of UNSCR 1325 according to de Jonge Oudraat (2013: 613), “...the women, peace, and security agenda has suffered from a lack of political commitment at the highest levels; the lack of strong systematic empirical evidence to infuse policy and inform best practices; and the lack of integration into mainstream international relations and security studies, including the lack of conceptual frameworks other than feminist conceptions of peace and security.”

However, de Jonge Oudraat (2013: 612) also noted that the September 11 attacks on the World Trade Center in America eclipsed “the importance and meaning of UNSCR 1325, as well as related concepts such as human security.” A 15-year review of UNSCR 1325 by UN Women (2015) made similar critiques of the “ever-changing and ever evolving reality” posing

⁶⁶ICRC Treaties and Documents Database

“major dilemmas for the four pillars of Security Council resolution 1325 and its subsequent resolutions.” It would seem that implementation of the historic women, peace and security resolution was not in line with expectations at the time of its adoption. Though there were instances of good practice cited in the 2015 UN Women report and though major challenges still remain, norm internalization is as equally dynamic as norm cascading.

As the case of Somalia shows, not having ratified CEDAW does not excuse it from programmatic implementation of UNSCR 1325, which includes and emphasizes CEDAW. The case shows that internalization is not based on the acceptance of a single norm, standard or practice, but it involves the cascading of much more, even perhaps of those norms that a state may not have accepted. It also demonstrates that state acceptance is of symbolic value, and internalization, as is norm construction and cascading, is a dynamic process.

5.1.3.1 Somalia: A Brief Background

Somalia is fragile country, scathed by colonialism and recurring conflict (Kleppe and UN_INSTRAW 2008). Women and girls make up about 50% of the Somali population and the gross inequalities and inhuman conditions they endure both as a result of the conflict, and in general, is a key factor contributing to Somalia’s extremely poor human development index. According to the UNDP, Somali women bear an unequal brunt of the hardships occasioned by poverty, conflict, natural disaster and a deeply clan-based culture, which promotes strict male hierarchy and authority. They suffer cruel, inhuman and degrading treatment including Sexual and Gender Based Violence (SGBV), a general lack of access to formal justice mechanisms and extreme marginalization and repression under the traditional justice system or harsh implementation of Sharia law.⁶⁷

⁶⁷ UNDP Somalia, *Gender Equality and Women’s Empowerment Strategy 2011-2015*, available online:

In 1960, Somalia became party to the UN Charter, followed by the four Geneva Conventions in 1962. However, it is not party to any of the Additional Protocols to the Geneva Conventions. Somalia has also not ratified CEDAW. But UNSCR 1325 is obligatory on Somalia as a member state of the UN. This mix of normative acceptance makes Somalia an interesting country case, revealing the dynamic nature of norm internalization.

5.1.3.2. Internalization Outcomes and Analysis

Policy and programmatic overviews indicate that despite a poor record, the Somali government are initiated and enabled several gender-focused projects and responses. They draw on normative principles stated in CEDAW, its many subsidiary provisions, and/or UNSCR 1325 that also invokes CEDAW. For instance, one of the outcomes of the UNDP gender strategy 2011-2015 states, “Somali women and men attain greater gender equality and are empowered.”⁶⁸

Firstly this outcome addresses both men and women, which is a welcome departure from the international gender focus that often highlights only women’s issues as seen in the cluster analysis above. However, the benchmarks set for this outcome are women centric such as gender equality and the empowerment of women implemented through advocacy initiatives, women’s participation in peacebuilding, or women supported by appropriately designed, implemented and enforced legal and policy frameworks in line with CEDAW and Security Council Resolutions 1325 (2000), 1888 (2009), 1889 (2009) and 1820. It is interesting that outcomes

http://www.undp.org/content/dam/undp/documents/projects/SOM/00060507_Gender%20Strategy%20for%20Somalia%20Final.pdf, accessed on 14 June 2015

⁶⁸ UNDP Somalia, *Gender Equality and Women’s Empowerment Strategy 2011-2015*, available online:

http://www.undp.org/content/dam/undp/documents/projects/SOM/00060507_Gender%20Strategy%20for%20Somalia%20Final.pdf, accessed on 14 June 2015

are measured against CEDAW, though the country is yet to be ratified the international convention.

There are several other programmes in Somalia that address concerns of women's inequality and violence against women, despite not ratifying CEDAW. As stated in a report by the UN Mission in Somalia, "Although FGS [Federal Government of Somalia] is yet to ratify CEDAW, it has signed/ratified numerous international covenants and conventions thereby committing to combating all forms of discrimination against women, including violence against women..."⁶⁹ CEDAW brings together international norms that can respond to women's issues. Not ratifying it does not excuse states from their existing obligations that stem from other international norms that CEDAW draws from, such as International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and others.

Meanwhile, for the first time in August 2013 a Ministry of Women and Human Rights Development was created. An inter-ministerial coordination mechanism on gender and implementation of the Government's National Plans on Ending Sexual Violence in Conflict is also being established. There are many gender-specific programmatic initiatives in play in Somalia that are rooted in many overlapping and interlinking international normative structures. At the stage of internalization, the overlap seems less significant than national priorities and strategies that almost always draw from international obligations. It is important to note that the dynamic nature of international norm cascading makes it challenging for states to avoid their obligations in practice.

⁶⁹ UNISOM (2014), *Implementation of the Beijing Platform for Action Beijing +20 Review: Somalia Country Report*, available online: [https://unsom.unmissions.org/Portals/UNSOM/BPfA%20final%20report%20\(1\).pdf](https://unsom.unmissions.org/Portals/UNSOM/BPfA%20final%20report%20(1).pdf), accessed on 14 June 2015

5.1.4 Summative Case Conclusion: Change and Order Through UNSCR 1325

Though UNSCR 1325 is a replication and particularization of existing international normative understandings and obligations in many ways, it pushes the boundaries of change further through re-emphasis and extension. As Krill (1985: 360) notes, “The international community will not succeed in remedying this situation merely by adopting new rules [speaking of the humanitarian protection of women], Most of all, it must see that the rules already in force are respected.” This is what UNSCR 1325 demonstrates. New norms, rules and laws are, in whole or in part, a reiteration of existing intersubjective structures – a reminder to the community of states to respect and uphold what they have, in principle, already agreed to follow, practice, adhere to, and a reinforcement of their obligations.

UNSCR 1325 is an important normative tool for women’s groups, NGOs and even the UN to push forward the promotion of women as agents of change, and not just victims of their circumstances, continuing to advocate not only for the need for protecting women, but also to look beyond their victimhood and empower them to be agents of their own and others protection (Naraghi-Anderlini 2000; Hill, Aboitiz, and Poehlman-Doumbouya 2003). The cluster analyses show that though norms of liberal peace push for increased women’s participation and inclusion, their continued need for protection is reiterated in the replication of international humanitarian laws, and practices. This is further complicated by the need to encourage gender balance, equality, and yet address gender-specific needs thus maintaining the normative gender divide. From a cluster perspective, the norms underpinning UNSCR 1325 represent cyclical and catalytic change.

Even from a chronological perspective (see table below), the dynamic nature of norm cascading can be seen. Women found their place and voice internationally with the League of Nations, which continued and grew with the UN and a myriad of international laws and conventions. At the same time it also meant that states gained more power over individuals – including women – when applying and adhering to normative standards and practice. With the establishment of the UN, women created their own international sphere. But “the price of creating separate institutional mechanisms for women has been the building of a "women's ghetto" with less power, resources, and priority than the "general" human rights bodies” (Charlesworth 2005).

However, the international space women carved out for themselves also meant that they could enable the further cascading of norms related to women’s issues, as seen from the 1975 up until the millennium resolution. Over the decades starting with the setting up of the UN, women’s rights and related issues gained legitimacy through international acceptance, institutionalization – from the UN Charter, UDHR to CEDAW and the UNSCR 1325 – and ongoing two-way legitimation. On the one hand, international political institutions – such as the UN and the UNSC – expanded and enhanced their legitimacy by adopting and intersubjectively accepting women’s rights and women’s issues. On the other hand, women delegates, women’s groups and organizations enhanced their own legitimacy and of their agenda (Otto 2010).

Table 2: Chronological View of Dynamic Cascading of UNSCR 1325

Dynamic Norm Cascading of UNSCR 1325 Before State Adherence						
Time Period	Meaning		Power		Legitimacy	
	Clarity	Specificity	Control	Capacity	Perception	Process
Until the end of League of Nations	Individual Sovereignty	Participation & Protection: League positions, labour fairness, anti-trafficking	Married women left out	To lobby nationally and internationally	2-way validation for women & League	Consultative
The UN (1945-1970)	Women's Rights: Victim	More protection: Myriad of Individual conventions	Human Rights were priority	To lobby nationally and internationally , especially through CSW	2-way validation for women and the UN	Institutionalizing
Women Decades	Gender Equality	Protection & Participation:	Human Developme	Programmatic	Validating women	Consultative & Institutionalizing

(1975-1995)		Mainstreaming	nt			nationally
UNSCR 1325 (2000)	Victim of violence & Agent of peace	Protection, Participation in peace, Gender equality	Intl peace is the priority	Strongest tool to lobby nationally and internationally	2-way validation for women & UNSC	Legitimizing
Change and Order (cluster & chronology wise)	Status of women defined and redefined over the years – CYCLICAL & CATALYTIC.	Always subordinate to prevailing broader contexts – CYCLICAL.		Increased legitimacy for women's rights over the years – CATALYTIC.		

Nevertheless, norms relating to women have always fallen within the larger normative framework of the respective period – be it the primacy of sovereignty, or international peace, or human rights, or peace and development, or human development. This indicates both catalytic movement towards the demands and agenda of women's rights, and also cyclical movement of the broader normative and hierarchically frameworks considered to be of higher priority. It is clear from the case study of UNSCR 1325 that it represents decades, and in the case of some norm clusters centuries, of norm cascading. The construction of a norm represents the creating and continuation of meaning, power and legitimacy through replication and particularization embedded in existing norm ecosystems, thereby maintaining order and enabling change. Similar dynamism can also been studied in other norm types, such as an international convention, as the next preliminary test case shows.

5.2. CASE II: Chemical Weapons Convention (CWC), 1993

It was easy in the case of the UNSC resolution 1325 to demonstrate the insignificant nature of state acceptance of a norm, and its quantitative value to norm cascading. Meanwhile, an international convention by definition demands the mandate of a critical mass of states in order to come into normative and legal effect. Yet, as the case of the 1993 Chemical Weapons Convention shows state acceptance and adherence by numbers is not enough to understand norm cascading. This case also provides the opportunity to test the revised model on a different norm type and examine clusters embedded in other ecosystems.

As long as there has been war, warfare technology has grown and advanced, and continues to do so. But one specific warfare medium caught the international glare of condemnation and collective opprobrium – chemical weapons. In this sense, the Convention on the Development,

Production, Stockpiling, and Use of Chemical Weapons and their Destruction (CWC) is considered unique in the history of arms control. Kellman and Seward (1994: 221) claim that, “The CWC, the most complicated and intrusive international arms control agreement ever signed, is an unprecedented multilateral effort to eradicate an entire category of catastrophic weapons.”

If the CWC is a normative breakthrough, the process that led to the emergence of this hardcore international norm was equally, if not more, daunting. Unlike the UNSCR 1325, the negotiating process that led to the CWC took a score years and more – 24 years to be precise (Robinson 1996), while others say more than 25 years (Kruttsch, Myjer and Trapp 2014) – for the international community of states to come to a consensus. But this research, using the reformulated norm life cycle model takes a deeper look at the CWC, examines, and rethinks its normative underpinnings. It must be noted here that due to lack of space, the CWC case will be tested with brevity with the primary aim being to demonstrate that the model can be applied to different norm types.

5.2.1. Stage 1: Synchronic Diagnostics of CWC 1993

5.2.1.1. The Long Road to the Convention

In 1968 Sweden paved the way for an international dialogue on chemical and biological weapons, for seizing the opportunity to propose that chemical and biological weapons “be placed on the agenda of the Geneva multilateral disarmament conference...” Egypt’s resort to poisonous gas warfare in Yemen, and America’s chemical warfare in Vietnam was what prompted the Swedish proposal. The proposal, once accepted by the leading powers of the Cold War U.S. and U.S.S.R., was placed on the agenda of the then international disarmament negotiation forum – the Eighteen Nation Committee on Disarmament (ENCD) (Robinson 1998: 22-23). This

committee, as did all its predecessor and successors, worked under the guidance of, and reported to the UN General Assembly.⁷⁰

A cursory review of the reports of the ENCD conferences shows that deliberation of the prohibition of chemical weapons and warfare mostly came tied to deliberations on the prohibition of biological weapons and warfare.⁷¹ And several political debates were spent on this very fact – unified or separated prohibitions on chemical and biological weapons and warfare. Bothe and others (1998: 23) believe this may have been “perhaps with a view to taking the anti-American sting out of the talks...” which also may have prompted a British-sponsored drafting and tabling of a biological disarmament treaty in July 1969.

At about the same time, a group of socialist – non-aligned and neutral – states drew up a draft convention that combined measures against both chemical and biological weapons. These states led by the U.S.S.R. thought a combined instrument would be the most effective. But the U.S., UK and others favored separate instruments.⁷² A few more drafts appeared in the early 1970s, prominent among those were the ones drafted by Japan in 1974, and a later one by the UK in 1976 that combined constructive elements of earlier drafts (Detter 2013). By the 1970s, the ENCD transformed into the Conference of the Committee on Disarmament (CCD) up until 1978, and then to the Conference on Disarmament since 1979.⁷³

⁷⁰ UN Office in Geneva, An Introduction to the Office. Today the international disarmament forum is called the Conference on Disarmament (CD), and continues to fall under the mandate of the UN Office At Geneva (UNOG) that serves as the representative office of the UN Secretary General in Geneva.

⁷¹ Final Verbatim Reports of the ENCD conferences between 1962 and 1969: <http://quod.lib.umich.edu/e/endc?cginame=text-idx;id=navbarbrowselink;page=browse>, accessed on 23 January 2016

⁷² *United Nations Yearbook on Disarmament 1970-1975*, p.141

⁷³ UN Office in Geneva, An Introduction to the Office

It was a 1985 draft convention (Detter 2013), and what the then negotiators considered bridging of the significant gap between the U.S. and U.S.S.R. over rapid investigation procedures of complaints of treaty violations (Dickson 1987) that gave the process some more girth. However, the endgame came in the early 1990s with the end of the Cold War and Iraq's threat to use chemical weapons in the First Gulf War. This led to the tabling of a compromised draft that led to a flurry of negotiations that brought about a general consensus. The CWC opened for signature in early 1993, and came into force in the first quarter of 1997 (Tucker 2001).

5.2.1.2. CWC and its Normative Foundations

The Convention consists of the preamble, 24 articles and annexes on chemicals, implementation and verification, and the protection of confidential information. The meat of the CWC lies in the first 14 articles that deals with matters ranging from general obligation of states, definitions, activities not prohibited under the convention, to national implementation measures, protection against chemical weapons, investigations, sanctions and related measures.

In Robinson's (2008: 224) analysis, "The draft treaty...was a delicate structure in which compromises – on six central matters: the scope of obligations, verification of compliance, safeguards, disarmament, executive procedures, and international cooperation in chemistry – were balanced against one another without, however, precluding for their future implementation any adaptation, if all state parties agreed, to a changed environment."

To date, 192 states are party to this environment-changing convention or at least hope to make it a world free of the scourge of chemical warfare. How the CWC hopes to accomplish this is by prohibiting the development, production, acquisition, stockpiling, retention, transfer and use of chemical

weapons. This multilateral norm not only demands this of state parties, but also prohibits state parties from assisting, encouraging or inducing others in these outlawed activities. Most importantly, state parties are required to destroy existing stockpiles of chemical weapons, and the related production facilities located on their territory or under their jurisdiction or control. Compliance of all these and more obligations under the CWC is monitored through an intricate verification system (Kenyon, Gutschmidt and Cosivi 2005). As the Chairman of the Ad-Hoc Committee on Chemical Weapons, Adolf Ritter von Wagner, mandated with ensuring the speedy adoption of the CWC said when presenting the draft convention in September 1992: "...The chemical weapons Convention provides for a cooperative, non-discriminatory legal instrument to eliminate the spectre of chemical warfare once and for all."⁷⁴ It was unprecedented in this sense. However the intersubjective meaning, power and legitimacy of the normative structures and practices reflected in the CWC were replicated and particularized from existing understandings and practices.

5.2.1.3. Embedding in Existing Normative Frameworks and Extracting Clusters

Though the CWC is groundbreaking in its efforts to set normative standards and practices in the field of chemical warfare, it is more importantly a much-needed extension of the broader international framework on arms control. As stated in its preamble, the CWC is: "Determined to act with a view to achieving effective progress towards general and complete disarmament under strict and effective international control, including the prohibition and elimination of all types of weapons of mass destruction."

It enables the international community to come a step closer to the world's normative goal of ensuring the elimination of all weapons of mass destruction, which included nuclear, biological and chemical weapons. As

⁷⁴ *United Nations Yearbook on Disarmament 1992*, p.29

contained in the resolution of the Commission for Conventional Arms, the definition of weapons of mass destruction was reaffirmed by the UN General Assembly “as atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons and any weapons developed in the future which might have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above.”⁷⁵ The CWC completes the trifecta in an unprecedented way. However this does not mean that it establishes new normative understandings and standards. A quick scan of the convention’s provisions will help situate them in existing frameworks.

Through general obligations and definitions of a range of chemicals, Articles I and II set out the scope and purpose of the Convention. Ensuring disarmament were the verifiable steps stated in Articles III, IV and V. Article VII sets out the provisions for state parties to ensure national implementation of the Convention, while the next Article established the international organization that would oversee the global implementation of the Convention. Article VI is a provision for activities not prohibited under the CWC. Articles IX, X and XI deal with consultations and cooperation, protection against chemical weapons and economic and technological development respectively. The rest of the Articles are procedural.⁷⁶

These provisions are drawn from, or extend existing behavior and obligations from states in relation to arms control. The CWC reiterates and emphasizes the existing norms of control over arms in many ways. Many norm clusters can be extracted to examine how arms control norms cascades through the construct of the CWC; three have been chosen here.

⁷⁵ UN General Assembly Resolution on the Prohibition of the Development and Manufacture of New Types of Weapons of Mass Destruction and New Systems of Such Weapons, 32/84B (1977)

⁷⁶ Explanations of the articles of the CWC can be found in the 1992 *UN Yearbook on Disarmament*; Krutzsch, W., Myjer, E., and Trapp, R. (2014) *The Chemical Weapons Convention: A Commentary*, Oxford: OUP; and others.

The first cluster relates to the **overall global objective of complete disarmament**. The second is the expected standard of **not using poison in warfare**, and the final cluster examines the thorny cluster of the **control and balance of dual use of prohibited substances**. A genealogical study of these clusters will demonstrate the depth of the normative roots of the CWC, the dynamic norm cascading of this Convention, and the continued cascading of the normative frameworks in which the convention is embedded.

5.2.2. Stage 2: Re-understanding CWC 1993 – A Genealogical Examination

5.2.2.1. Cluster 1 – Achieving Complete Disarmament

Timeframe: 1915-1990

General and complete disarmament (GCD) is the core of the international arms control normative framework, and it is reflected in many of the treaties, resolutions, and other hard and soft international laws, including the CWC. Predecessors to the CWC also reiterate this international normative goal on GCD, such as in the Nuclear Non-Proliferation Treaty (NPT) of 1968, which mentions twice that states undertake the obligations in the NPT to work towards general and complete disarmament.⁷⁷ But GCD is not unique to the modern-day arms control normative framework. Scholars such as Jonas (2012) claim that GCD has a history that dates back further than the NPT, while others like Rydell (2010) claim that it dates back centuries and millennia.

5.2.2.1.1. Early Friction between Security and Disarmament

As history shows, GCD did not always begin as general and complete. It was simply disarmament, which in its strictest sense “means the physical

⁷⁷ United Nations, *Treaty on the Non-proliferation of Nuclear Weapons*, 1 July 1968, 729 UNTS 161, GCD is mentioned in the preamble and Article VI of the treaty.

destruction or elimination of certain types of weaponry” to a more fluid understanding that includes measure “various confidence-building measures, limitations of range or yield, reduction in numbers...more appropriately called arms control” (Rydell 2010: 227). So disarmament began with control, and grew to include a whole spectrum of measures that would eventually be general and complete.

Nevertheless control was not all encompassing. Its normative underpinnings were linked to the normative and practical necessities of national security as far back at Woodrow Wilson’s 1918 Fourteen Point Speech to Congress, which was also adapted in the 1919 Covenant of the League of Nations. While Wilson’s Fourth Point suggested that, “national armaments will be reduced to the lowest point consistent with domestic safety,”⁷⁸ Article 8 of the Covenant not only linked reduction in armaments to levels required for national safety but also to “...the enforcement by common action of international obligations.”⁷⁹

However this was not always the case. In the mid to late 1800s, instances of arms control were more absolute than practices in the early 1900s indicated above. The earlier, more prohibitory, norms were rooted in the collective agreement on avoiding unnecessary human suffering, and not on the need for national or international security. For instance, in 1868 the St. Petersburg Declaration renounced the use, in time of war, of explosive projectiles.⁸⁰ In

⁷⁸ President Woodrow Wilson, *Address to Joint Session of Congress on the Conditions of Peace* (Fourteen Points Address) on 8 January 1918, available online on Yale Avalon Project: http://avalon.law.yale.edu/20th_century/wilson14.asp, accessed on 3 February 2016

⁷⁹ Article 8 of the *Covenant of the League of Nations*, 28 April 1924, Available online at the Yale Avalon Project: http://avalon.law.yale.edu/20th_century/leagcov.asp, accessed on 3 February 2016

⁸⁰ Declaration Renouncing the Use, in Time of War, of Explosive Projectiles, adopted at St. Petersburg, on 29 November / 11 December 1868. Available online: <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=3C02BAF088A50F61C12563CD002D663B&action=openDocument>, accessed on 3 February 2016

1899 a Hague Declaration on Expanding Bullets was made in the effort to prohibit the use of these weapons that inflicted unnecessary cruel wounds.⁸¹

Though there are normative breaks in the international objective of GCD, it continues to cascade through replication of various practices, and particularized to different kinds of warfare and arms. It allows for measures such as declaration, verification and even sanctions in an effort not only to maintain arms control, but also to allow for accepted use of prohibited materials (discussed in the third cluster). These processes form the foundation of GCD together with prohibition and destruction of globally and collectively renounced weapons. International norms that came before the CWC paved the way in establishing these foundations, such as in the Nuclear Proliferation Treaty, and Biological Weapons Convention.

However, there are claims that earlier approaches of these processes in the NPT and the Biological Weapons Convention (BWC) were weak, biased and ineffective. In Tucker's (2001: 2) words, "In contrast to the NPT, which grants a small number of nuclear powers the right to possess the same weapon denied to other states, the CWC imposes equal rights and obligations on all members, whether or not they possess chemical weapons at the time of joining. Compared with the BWC, whose lack of formal monitoring provisions has made it easy prey for violators...the CWC breaks new ground in the extent and intrusiveness of its verification regime." In this way, the CWC extends the normative boundaries of GCD.

5.2.2.1.2. Sanctions and GCD

However not all measures conform to the full normative meaning of GCD, such as sanctions. Here, the examination will devote further space on the

⁸¹ Declaration (IV, 3) concerning Expanding Bullets, adopted at The Hague, on 29 July 1899. Available online: <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D528A73B322398B5C12563CD002D6716&action=openDocument>, accessed on 3 February 2016

norms on sanctions as relevant to GCD. It is a useful precursor to the country case study explored in stage 3 below. As for the norms of international sanctions, Davies and Engerman (2003) claim that the modern-day sanctions may be linked to the use of pacific blockades of the early nineteenth century, the first of which was recorded in 1827.⁸²

This lineage was borrowed from the League of Nations as stated in Article 16 of its covenant without mentioning the word sanctions. It stated that, if a league member resorted to war, allowed other league members to “subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.”⁸³ It also allowed for collective military action.

5.2.2.1.3. An Analysis

Thus from using sanctions as a tool of coercion in the 1800s, the meaning, power and legitimacy of sanctions shifted to being a response to inter-state wars during the League years. Drafters of the UN Charter considered the normative foundations of sanctions a bit more thoroughly than did the drafters of the League Covenant. They expanded the scope of the League’s Article 16 when drafting the UN Charter, vesting it with powers to respond to threats to not just inter-state wars, but more importantly threats to international peace and security as stated in Chapter VII of the Charter. It

⁸² Pacific blockades involved the deployment of a naval force by a country or coalition of countries to interrupt commercial intercourse with certain ports or coasts of a state with which these countries were not at war. They evolved gradually over time as a coercive tool, short of war, designed to compel recalcitrant nations to pay their debts (often reparations) and to settle other international disputes.

⁸³ Article 16 of the *Covenant of the League of Nations*, adopted on 28 April 1924

provides for a whole host of sanction measures – though here too the word is not used – including military retaliation.⁸⁴

Many treaties since then, including the NPT, BWC and CWC allow for breaches and acts of treaty violations to be submitted for consideration before the UN Security Council who can then suggest measures of response in accordance with the UN Charter. The brief genealogical overview on sanctions show that disarmament measures can vary on their conformity to the broader framework thus causing friction within norm ecosystems, which is an accepted aspect of norm co-existence.

5.2.2.2. Cluster 2 – Extending the Construct of Poison as Taboo

Timeframe: 1600-1990

Together with being embedded in the normative framework of GCD, CWC has strong links to the history of norms that prohibit the use of poison as a weapon of war (Price 1997; Jefferson 2014). Prohibitions on the use of poison in warfare were already an accepted norm as early as the 1600s, and even in the ancient laws of war as prescribed in Greek and Hindu texts (Price 1997).

In more recent times, norms on the prohibition of poison were set in writing as early as 1863. “Military necessity does not admit of cruelty...It does not admit of the use of poison in any way...” states Article 16 of the Lieber Code. In 1880⁸⁵, the Oxford Manual of the Laws of War on Land also prohibited the use of poison in any form in Article 8⁸⁶. The notion of cruelty attached to the use of poison is not the only reason for such a long history of

⁸⁴ UN Security Council (2013), *UN Sanction: Special Research Report No.3*

⁸⁵ Instructions for the Government of Armies of the United States in the Field (Lieber Code), 24 April 1863. Available online: <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=A25AA5871A04919BC12563CD002D65C5&action=openDocument>, accessed on 3 February 2016

⁸⁶ The Laws of War on Land, Oxford, 9 September 1880. Available online: <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=40371257507EBB71C12563CD002D6676&action=openDocument>, accessed on 3 February 2016

prohibition on poison. If the use of poison were allowed, it would deflect from the very characteristic of wars – the use of force by those in control of the most powerful means of force. Price (1997) contends that this is one of the fundamental norms that have sustained the ban on poison over the centuries and millennia. Poison, he argues, is a weapon of the weak that can level the battlefield against those in power.

A first collective international renouncing of poison came in 1899 at The Hague. It was not renounced once, but twice – first, in Article 23(a) of Section II of the Hague Convention, and second in a Declaration concerning Asphyxiating Gases. Article 23(a) prohibited poison and poisoned arms, while the declaration made an abstention “from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases.”⁸⁷ Here the use of poison, and its technological application were collectively abstained from.

5.2.2.2.1. An Analysis

The separate treatment can be understood as a reiteration of the existing taboo on poison, and an extension in accepting the possibility of technological advancements that used poison. This is especially interesting, according to Jefferson (2014) and Price (1997), because the prohibited projectiles or shells were not yet developed at the time. Similarly, it is the combination of the prohibition on poison as a weapon and technological advancements that could be used as poisoned weapons that are the normative lineage of the CWC (Price 1997). Therefore, the convention continues the existing taboo on poison by replication and particularizes the practice to chemicals. However, technological progress is a grey area in the

⁸⁷ Declaration (IV, 2) concerning Asphyxiating Gases, adopted at The Hague on 29 July 1899. Available online: <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=2531E92D282B5436C12563CD00516149>, accessed on 3 February 2016

normative framework of arms control, as seen in the examination of the next cluster.

5.2.2.3. Cluster 3 – Controlling and Balancing Norms of Dual-use

Timeframe: 1905-1990

This cluster can be considered an extension of the two clusters above. The cluster of controlling and balancing dual-use technologies and their advancements are perhaps more important in the international frameworks that govern weapons of mass destruction because technological advancements are not stoppable. As Meier and Hunger contend, “Efforts to stop the spread of weapons of mass destruction (WMD) increasingly focus on preventing the proliferation and misuse of dual-use technologies” (Meier and Hunger 2014: 6).

The normative meaning of dual-use is not special to the weapons of mass destruction; its origins lie in a more conventional means of warfare. “The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity.”⁸⁸ This is the closing statement in the 1868 declaration prohibiting a rather conventional weapon of war – explosive projectiles.

5.2.2.3.1. Dilemmas of Technology in Arms Control

The belief and understanding that science can appease the laws of war with laws of humanity seems to have extended to the possibility that advancements in prohibited materials – as those used in WMDs – can have

⁸⁸ *Declaration Renouncing the Use, in Time of War, of Explosive Projectiles*, adopted at St. Petersburg, adopted on 29 November / 11 December 1868. Available online: <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=3C02BAF088A50F61C12563CD002D663B&action=openDocument>, accessed on 5 February 2016

positive benefits. This, as Price (1997: 17) argues, is because of “the dominant interpretation of technology as a value-neutral phenomenon.” It means that the collective meaning, power and legitimacy lie in the use of the technology, not in the technology itself. This normative underpinning has often raised the dual-use dilemma in the history and discourse of arms control.

Perhaps not through the direct use of the term dual-use, but declarations and prohibitions on arms – conventional and non-conventional – have treaded the normative acceptance of certain uses of certain types of arms. For instance in the case of submarine mines, a fine line was drawn on what uses were forbidden: unanchored automatic contact mines, anchored automatic contact mines that do not become harmless on release, and torpedoes that do not become harmless after missing a mark. This 1907 Hague Convention was an attempt to “mitigate the severity of war,” as stated in its preamble.⁸⁹ These early provisions are a reflection of the value neutrality of technology with focus on the limits of its use.

5.2.2.3.2. Poisoned Technology

This understanding of the dual nature – harmful and harmless – of technology has permeated today’s international framework of arms control. However, there are slight normative shifts. Certain weapons are prohibited as a whole, including those that make the list of the WMDs. This means that the prohibition is also on the technology itself. Meanwhile dual-use now focuses on the materials that are used in the prohibited weapons – a shift from the ends to the means.

⁸⁹ *Convention (VIII) Relative to the Laying of Automatic Submarine Contact Mines*, adopted at The Hague on 18 October 1907. Available online: <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=7D389CA23C22337BC12563CD002D67FF&action=openDocument>, accessed on 5 February 2016

This shift came with the inclusion of poison into the international arms control agenda in the international debates of 1925, with the realization “that nearly all materials used in chemical weapons were to be found in non-military industrial products and processes” (Bryden 2013: 21). This led to the expansion of the normative boundaries of dual-use in that the materials used in harmful technology could have positive use. Dual-use norms of both materials and machines have made arms control, especially achieving GCD more complicated.

5.2.2.4. Overall Cluster Analysis

The 1993 Chemical Weapons Convention is a replication, strengthening and particularization of at least 100 years of normative understandings even before state acceptance of the CWC, as the examination of the norms clusters above demonstrates. The overlapping layers of norms, as seen in this genealogical examination demonstrate that norm cascading is dynamic, and in the case of the CWC more complex than in the UNSCR 1325. In many ways, even the grey areas of international arms control are reiterated in the CWC, for instance in the understanding of the actual extent and nature of general and complete disarmament, and provisions for dual-use research and development.

To validate the genealogical examination, here is a brief look at the state acceptance by numbers of some of the CWC predecessors from which its norms are drawn. The Second Hague Convention of 1899 that set down the provisions of the Laws of War on Land had 51 state parties. However the Hague Declaration concerning Asphyxiating Gases of the same year and resulting from the same conference had only 33 state parties. By the end of the First World War, 138 states became party to the 1925 Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.

It became near universal with the Nuclear Non-proliferation Treaty in 1968 and a tad short of universal (173 state parties) for the Convention on the Prohibition of Biological Weapons. The CWC was accepted by 192 states, in effect not only cascading the convention but all the norms it replicates and particularizes irrespective of whether individual states are party to the preceding instruments. It could even be said that the cascading of norms within the CWC may have already been in diffusing before the acceptance of the convention itself because of its embedded construct. In fact, the country case in stage 3 demonstrates that the international community first condemnation against chemical weapons came in 1982, over a decade before the chemical weapons convention.

5.2.3. Stage 3: Re-examining Internalization of CWC – Iraq and Agent Yellow

The near universal acceptance of the CWC is often cited as a good case of international norm compliance. However, the global acceptance of the Convention does not mean that its implementation and internalization are challenge-free. Some, like Robinson (2008: 223), highlight the need to address technological advancements and the “absence of effective measures of technology governance” to ensure the long-term sustainability of the CWC. Budgetary constraints, reinterpretation of treaty provisions that hinders inspections, lack of political will to confront non-compliance, and refusal of a few to join the treaty are some more challenges that could undermine the ability of the Convention to eliminate chemical weapons from the planet (Tucker 2001).

But as the genealogical examination has demonstrated norm cascading is long term and dynamic, and not dependent on a single treaty. Norm internalization must not only be seen as following state acceptance, but also at time preceding it, and even influencing norm cascading, as demonstrated in the case of Iraq nearly a decade before the CWC was adopted.

5.2.3.1. Iraq: A Brief Background

In the 1980s, Iraq and its use of chemical weapons drew the glaring contempt of the international community. In late 1983, Iran first complained to the UN alleging that Iraq employed chemical weapons in their attacks on them (McCormack 1991). After several more complaints that led to UN investigations, Iraq was officially accused of using mustard gas, and reluctantly for the use of nerve gas. UN investigations also revealed the use of chemical weapons by Iran, however not conclusively proven.

But despite sufficient proof, the reaction of the international community was far from ideal. In 1986 came the first disapproval against the use of chemical weapons, as stated in UNSC Resolution 582: "...deplores the escalation of the conflict...the violation of international humanitarian law and other laws of armed conflict and, in particular, the use of chemical weapons contrary to obligations under the 1925 Geneva Protocol."⁹⁰ This was further reiterated in UNSCR 588⁹¹, and then condemned in UNSCR 612⁹². Neither party was singled out for the violations despite the UN investigation reports.

5.2.3.2. International Internalization Before Acceptance

UN's reaction to the international law violating use of chemical weapons was limited to condemnations even in the years of Iraq's invasion of Kuwait. However, sanctions were imposed on Iraq⁹³ for invading Kuwait and threatening international peace and security, and not for using chemical weapons that killed thousands during the Iran-Iraq War or the threat of using chemical weapons in Kuwait.

⁹⁰ UN Security Council Resolution 582 on Iraq-Islamic Republic of Iran, adopted on 24 February 1986, S/RES/582 (1986)

⁹¹ UN Security Council Resolution 588 on Iraq-Islamic Republic of Iran, adopted on 8 October 1986, S/RES/588 (1986)

⁹² UN Security Council Resolution 612 on Iraq-Islamic Republic of Iran, adopted on 9 May 1988, S/RES/612 (1988)

⁹³ UN Security Council Resolution 661 on Iraq-Kuwait, adopted on 6 August 1990, S/RES/661 (1990)

It was only after the end of the Iraq invasion of Kuwait that another UNSC resolution was adopted under Chapter VII of the UN Charter that not only required Iraq to comply with its obligation from the 1925 Geneva Protocol, but also “Decides that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of: (a) All chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities related thereto...”⁹⁴

5.2.3.3. An Analysis

On both occasions, it was the Sanctions Committee on Iraq that was mandated with the respective responsibilities (Conlon 1995). In the latter instance, decisions on dual-use were left to the discretion of the committee. The case of Iraq is especially interesting because of this UNSC action under Chapter VII that demanded the destruction and removal of chemical weapons even before the creation of the Chemical Weapons Convention, and because the 1925 Geneva Protocol does not stipulate such measures; it only prohibits. The case of Iraq demonstrates that state acceptance and adherence may not always follow the construction of a norm. As the revised life cycle model shows, norm cascading is dynamic and thus diffusion too can occur in non-linear ways.

5.2.4. Summative Case Conclusion

As the application of the revised model effectively demonstrates, CWC is a replication and particularization of many layers of existing norms that it not only re-emphasizes, but also extends. The continuation, shifts and changes in meaning, power and legitimacy can also be presented in a chronological view thus triangulating the analysis together with the genealogical

⁹⁴ United Nations Security Council Resolution 687 on Iraq-Kuwait, adopted on 3 April 1991, S/RES/687 (1991)

Table 3: Chronology of Dynamic Cascading of CWC 1993

Dynamic Norm Cascading of CWC 1993 Before State Adherence						
Time Period	Meaning		Power		Legitimacy	
	Clarity	Specificity	Control	Capacity	Perception	Process
Before League of Nations (till 1900)	Complete prohibition on poison	Poisoned weapons (including technological advancements)	Control over means of warfare	Avoid unnecessary suffering	Only a weak state would use poison	Allied groups that led to larger collective deliberations.
The League Period and WWI	Taboo on asphyxiating gases	Prohibition on poison, chemical and bacteriological warfare	Control over means and materials of warfare and the beginnings of arms control	Avoid unnecessary suffering. Sanctions were possible but vaguely stated in the League	Identity of a civilized world	Institutionalizing

				Covenant		
Cold War Period (until 1991)	GCD of WMDs	Poison, nuclear, biological and chemical weapons. But not on the substances themselves	Dual-use and arms control	Declarations, Verifications, and Sanctions under UN Charter	Technological advancements are desirable and supported	Consultative & Institutionalizing nationally
Change and Order	WMDs prohibited in warfare – CYCLICAL & CATALYTIC		Arms control extended to peaceful technological advancements of substances that fall within the framework – CATALYTIC		Arms control legitimized with incidents of violations and wars that saw excessive suffering – CATALYTIC	

examination and quantitative validation. As the CWC is closely linked to warfare, the timeline used is the chronology table below is associated to periods of major global wars.

The 1993 Chemical Weapons Convention replicates the taboo on poison and extends it to include a taboo on its development, production, stockpiling and not only use. However the inclusion of poison in the arms control debate in the League period also extended to the dual-use discourse. By the construction of the CWC, norms of dual-use expanded to include not only technological uses, but also the substances used in the technologies. In some cases, the prohibition was absolute. The interlaced layers of norms make arms control dynamic but complicated. This may mean that implementation of the convention is not easy, but it is nuanced. The most unique aspect of the CWC is that its adoption makes possible the international normative ambitions for general and complete disarmament of WMDs.

5.3. CONCLUSION: Reflections on the Application of the Model

First and foremost, the applicability and feasibility of the model has been successfully demonstrated through the preliminary testing. The model has revealed the dynamic norm cascading before state adherence in the cases of UNSCR 1325 and the CWC 1993. It substantiates the hypothesis set out in this research that the classic constructivist accounts of how norms spread and develop are deficient in terms of enabling sufficient elaboration of the mechanisms by which these processes occur. Norm cascading is more dynamic and multi-dimensional. Norms extend their reach and reinforce their power and legitimacy through replication and particularization before state adherence, and do not merely cascade through state adherence.

Before examining the UN Guiding Principles on Internal Displacement in depth in the next two chapters, the rest of this conclusion reflects the advantages, challenges and discoveries made in applying the revised model in this chapter. A discussion of these will improve its application on the in-depth case study.

(1) Choosing Norm Clusters – One operational aspect that was challenging in this preliminary testing phase was in choosing three norm clusters before the genealogical examination. In the first case on UNSCR 1325 the choices were made based on the 18-point resolution, and provisions therein that roughly could be categorized into the clusters of peacebuilding, humanitarian law and gender equality. It was based on these categories that the clusters were chosen. Meanwhile, in the case of CWC the clusters were chosen from within the broader framework of arms control and its various subsets. The choices in the second case made the genealogical examinations interconnected in many ways, and more dynamic. A combination of both methods can be used in the in-depth study of the Principles.

(2) Triangulating the Cluster Analysis – Multi-dimensional layers of analyses is a major advantage from this dynamic model. The cluster genealogies provide an embedded, and intricate view of the meaning, power and legitimacy of the selected normative foundations. This can then be further validated by the quantitative overview of the number of states that have accepted the norm being studied. The numeric analysis also allows a statistical view within the genealogy. Though the quantitative perspective was separated from the cluster examination in the preliminary testing, in the in-depth study, each step of the genealogical examination will be validated quantitatively for a more systematic approach. Finally, the triangulation of the analysis takes place with a chronological perspective of the dynamic cascading thus enhancing a case study. In designing the revised model, this

final analysis feature was not included. It was an addition that this research developed in testing UNSCR 1325 and finding a way to make the finishing touch to the case comprehensive and concrete.

(3) Textual Examination – It was noted in the case of the CWC that there were many drafts of the convention before the final one was adopted. Given more space, the preliminary testing could have studied the various drafts for shifts in focus, provisions, language and meaning. This is enrich the synchronic analysis and may enable a more nuanced choice of clusters. In the study of the Guiding Principles, the many drafts in possession of this researcher will be examined in stage 1.

(4) Choosing Country Test Cases – The primary factor that influences the choice of the country case in stage 3 must be to further reveal the dynamic nature of norm cascading. As in the case of Somalia and UNSCR 1325, the study showed that despite not ratifying CEDAW, its outcomes and targets were being programmatically internalized and implemented following the adoption of the resolution. Meanwhile, the sanctions on Iraq for the use of chemical weapons before the adoption of the CWC demonstrate that norm cascading and diffusion does not take place in a linear way.

The preliminary testing phase has revealed some interesting aspects that strengthen the application of the model. It also demonstrates that the model can be applied to different types of norm instruments, be it a UNSC resolution or a convention. The model will be made more robust in the following chapters as it will be applied to yet another type of international norm – the 1998 UN Guiding Principles on Internal Displacement.

CHAPTER 6.

INTERNAL DISPLACEMENT: FROM CRISIS TO NORM CREATION

“You think of yourself as a citizen of the universe. You think you belong to this world of dust and matter. Out of this dust you have created a personal image, and have forgotten about the essence of your true origin”

- Maulana Jalal al-Din Rumi (as cited in Shiva 2000: 30)

6.1. Internal Displacement: The Crisis

Internal displacement is one of the most complex crises the world faces. It is a global and local crisis; it is an individual and collective crisis; it is a humanitarian and human rights crisis. It manifests itself in many ways, especially in its most violent form, whether in natural or man-made situations of internal displacement. It is a crisis of global proportions that has claimed millions of lives, including fatalities.

The international community has tried to address the increasing complexities of internal displacement over the decades without much success, and continues to do so without any real commitment, especially in relation to the well-established laws of protection of civilians. Eventually in 1998 the UN Guiding Principles on Internal Displacement (henceforth the Guiding Principles or GPs) were developed. Nevertheless, the crisis persists. The situation demands a deep examination of the normative foundations on which Guiding Principles are constructed, their meaning, and the collective understandings they cascade.

These are the aims over chapters 6 and 7, which examine the Guiding Principles in depth in order to situate them within the broader international normative framework and better understand their impact not only on internal displacement, but also on international order and change. This chapter –

first part of the case – lays out the first stage of the model proposed in this present thesis, which synchronically studies the development of the Principles that begins in the years soon after the end of the Cold War. Such a study has not been done before, let alone an exploration of the dynamic cascading of the norms embedded in the Principles, which will be examined and analyzed in the next chapter.

6.2. The Development of International Norms on Internal Displacement

The end of the Cold War brought the growing and glaring problem of internal displacement to the forefront of international affairs posing “a challenge to the international community to develop norms, institutions, and operational strategies for preventing such dislocation, addressing its consequences, and finding durable solutions” (Deng and Cohen 1998: ix). The world’s attention was drawn to internal displacement not only because of the large numbers of those forced from their homes within borders, but also because of the masses of people forced to flee across borders seeking asylum. Additionally, the political climate following the end of the Cold War was shifting making it conducive for the international community to consider such sensitive issues and mobilize enough concern and support to initiate action.

6.2.1. Stage 1 Synchronic Diagnostics

Timeframe: Early 1980s-1998

6.2.1.1. Paving the Way for Norm Emergence

By the mid-1980s, the US Committee on Refugees was providing data and information for a distinct category of people it recognized as internally displaced in its World Refugee Surveys. Though the Committee’s categorization may not have been officially accepted as an international standard, it raised the issue to international attention. A 1986 report for the Independent Commission on International Humanitarian Issues (ICHI) states, “There is no official estimate of the number of people who currently

find themselves in this situation. No international agency is responsible for collecting such data, and it is sometimes difficult to make a realistic distinction between displaced people and other migrants and nomads.” The ICIHI report went so far as to say, “few people realize that the plight of internally displaced people is often much worse than that endured by refugees” by citing evidence from cases such as Ethiopia, Guatemala, Bangladesh, Nigeria and more. Though by the mid-1980s, internal displacement was becoming an increasing challenge for the international community, response to the crises remained diplomatic and within the normative realms of humanitarianism, and collectively still accepted as an internal matter.

One of the first successful attempts that made the UN more than ‘take note of’ or ‘express deep concern for’ at an internal displacement situation was at the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa (SARRED). Called for by the Organization of African Unity (OAU) in a resolution in March 1984⁹⁵, which was then passed by the council of ministers in 1986⁹⁶ then led to the three-day conference in Norway in August 1988. Though African nations were troubled by a growing number of IDPs, it was the refugee crisis faced by countries in Southern Africa owing to decolonization, apartheid and ongoing civil wars⁹⁷ that led to the call for an international conference. This was also despite the earlier efforts taken by the OAU, including drafting and adopting a more comprehensive refugee convention⁹⁸, to address the needs and issues of African refugees.

⁹⁵ Organization of African Unity Resolution CM/939 (XL) on the Situation of Refugees in Africa, adopted on 5 March 1984

⁹⁶ Organization of African Unity Resolution CM/1040 (XLIV) on the Situation of Refugees in Africa, 26 July 1986

⁹⁷ UNHCR, *State of the World's Refugees 2000: Fifty Years of Humanitarian Action*, pp.37-59

⁹⁸ Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa*, adopted on 10 September 1969, 1001 UNTS 45

Statements by the then Prime Minister of Norway, then President of Mali and Chairman of the OAU, and the then Refugees Commissioner at the SARRED Conference respectively highlighted the IDP crisis by mentioning the lack of an international mechanism, the lack of a specific legal framework, and the need to address the inhumane causes that had driven the one million refugees and five million IDPs out of their homes. The OAU conference adopted the Oslo Declaration and Plan of Action at the close of their session. Paragraphs 21 and 22 of the Plan of Action specifically addressed the IDP concern. However it did so only from a humanitarian perspective:

“In view of the absence of a United Nations operational body specifically charged to deal with the problems of and assistance to internally displaced persons, the Secretary-General of the United Nations is requested to undertake studies and consultations in order to ensure the timely implementation and overall co-ordination of relief programmes for these people.

To ensure the effective implementation of relief programmes for internally displaced persons, the international community is called upon to co-operate in efforts designed to ensure the safe transport of relief and emergency goods.”⁹⁹

A similar concerted plan of action was adopted by the Central American countries in Guatemala City that also specifically addressed the humanitarian needs of the IDPs in the region.¹⁰⁰ The 1989 Central American conference, called CIREFCA, was also building on existing earlier efforts,

⁹⁹ *Oslo Declaration and Plan of Action on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa*, Doc. 88/5, 24 August 1988

¹⁰⁰ *Declaration and Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons*, 30 May 1989, CIREFCA 89/13/Rev.1

especially the 1984 Cartagena Declaration¹⁰¹. These regional efforts provided the much-needed momentum for a loose coalition of non-governmental actors to set and push the international normative agenda on IDPs. By the late 1980s to early 1990s, the World Commission of Churches (WCC) and its affiliates, the Quaker United Nations Office and the Refugee Policy Group (RPG) lobbied to get states to take action on issues of internal displacement (Newland, Patrick, Zard and OCHA 2003, 19). These NGOs can be considered a coalition of norm entrepreneurs, together with countries such as Austria and Norway who later nudged the NGO lobbying efforts further within the UN.

The efforts of the RPG need particular mention here, as one of the primary drivers of the NGO lobbying campaign in the analysis of this present research. The work of the RPG in collaboration with other NGOs also sheds more light on the framing of the IDP issue. Established in 1982 by Dennis Gallagher, RPG focused on resettlement assistance and protection of refugees and asylum seekers in the United States. Gallagher and his team almost naturally expanded their work towards the plight of the displaced within the international boundaries of their own countries. Titled 'Internal Refugees: The Hidden Half,' a 1988 RPG article by Lance Clark said, "We cannot, and must not, continue to ignore the existence of these people and our responsibility to find ways to help them."¹⁰²

By the 1980s, the crisis of mass exoduses due to the increasing number of internal armed conflicts had become overwhelming. And experts, observers and others from various fields of work were not coordinated in their efforts to initially, even conceptualize the problem. Everything from 'internal refugees,'

¹⁰¹ *Cartagena Declaration on Refugees* adopted at the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena, Colombia, 19-22 November 1984

¹⁰² This article was published by the US Committee for Refugees in *World Refugee Survey: 1988 in Review*

‘internally displaced persons,’ to ‘de facto refugees,’ ‘displaced people,’ and more was used to describe and define the situation being addressed.

In many ways, the RPG continued to take conceptual lead on the IDP idea. In 1989, Lance Clark from the RPG who first used the term internal refugees shifted to internally displaced persons (IDP), which in his 1988 article he had already classified as the broader category of those caught in refugee-like situations but remain within their own countries (Clark 1989). Clark (1988) did not offer much as a definition but focused on the structural causes of internal displacement, and why and how international assistance and protection did not reach IDPs.

At this early stage of trying to frame the IDP issue, the focus was on the protection of IDPs with an emphasis on their human rights. To further strengthen the human rights arm of the RPG, Gallagher brought on board Roberta Cohen – an Executive Director of the New York-based International League of Human Rights and deputy assistance secretary in the State Department’s human rights bureau in the Carter administration. Cohen was an ardent advocate of the rights of the displaced perhaps drawing on her Jewish roots, and also because she had witnessed first hand the misery and plight of the Ethiopians displaced by famine and conflict in 1984-85 when she lived in Addis Ababa (Weiss and Korn 2006). With the arrival of Roberta Cohen, RPG’s advocacy and campaign for the rights of IDPs turned became more focused.

Beginning in 1989, following Cohen’s move to RPG, she wrote on the crisis of internal displacement and pushed for action in the UN through her publications, statements and at meetings. In a RPG pamphlet published in January 1990 on introducing refugee issues into the UN human rights agenda also presented Cohen with the opportunity to bring the human rights issues of the internally displaced. In this document she noted:

“Recently two major international conferences drew attention to the plight of internally displaced persons, the 1988 meeting on Southern African Refugees, Returnees and Displaced Persons (SARRED) in Oslo, Norway, and the 1989 International Conference on Central American Refugees (CIREFCA) held in Guatemala. General Assembly resolutions, in response, have called for the creation of a UN mechanism to coordinate relief programs for internally displaced. But no response to date has called for the protection of their human rights. It is time for the UN to consider the establishment of international standards and machinery to protect those internally displaced.”

By October 1990 in a briefing published by the International League of Human Rights Cohen advanced three demands reiterating that:

“The international community has been slow in recognizing and addressing the problem. In UN human rights bodies, there has been no debate or action on internally displaced persons. It is time now for the UN to turn its attention to this new and growing category of persons and consider ways to provide them with assistance and protection.”

Her demands included, firstly, that the internally displaced need human rights protection. Cohen also suggested that a report be prepared to study the scope of the human rights violations faced by IDPs. Finally, she demanded that there was a need for an international rapporteur and the development of a body of standards to protect IDPs (Cohen 1990). Cohen and the RPG’s driving role in the pushing forward the NGO lobbying effort was evident, as noted by Elizabeth Ferris.

In a letter dated 1 January 1990 from the World Council of Churches to Dennis Gallagher, Elizabeth Ferris expressed deep gratitude to Roberta Cohen on guiding the way forward “strategically and practically.”¹⁰³ It was Cohen’s practical demand for a special rapporteur that was then advanced by the World Council of Churches in the 1990 session of the UN Commission of Human Rights, as per a letter dated 23 November 1989 circulated amongst the members of the WCC by Ferris.¹⁰⁴ Together with Martin McPherson at the Quaker Office at the UN in Geneva, Ferris at the WCC focused on the first lobbying steps “to get the UN more actively involved with the internally displaced,” and the RPG focused on “the substance” (Weiss and Korn 2006: 19).

By February 1990, Roberta Cohen made her case before the UN Commission on Human Rights in a meeting for its delegates organized by the Quaker UN Office and the WCC. In her statement to the Commission she reiterated that “the Commission on Human Rights in recent years has begun to recognize the problem, namely that there is no human rights protection for those internally displaced. Commission resolutions on El Salvador¹⁰⁵, Guatemala¹⁰⁶ and Afghanistan¹⁰⁷, for example, have referred specifically to internally displaced persons as being without protection or assistance. But the Commission has not gone beyond pointing this out in select cases. Isn’t it time to go a step further? The World Council of Churches at this Commission session has introduced a statement calling for the appointment of a special rapporteur for internally displaced people. This

¹⁰³ 1990 letter from Elizabeth Ferris to Gallagher, from the unarchived collection of the Brookings Institute

¹⁰⁴ 1989 letter from Elizabeth Ferris to rest of WCC members, from the unarchived collection of the Brookings Institute

¹⁰⁵ UN Commission on Human Rights, Situation of human rights in El Salvador, 10 March 1988, E/CN.4/RES/1988/65

¹⁰⁶ UN Commission on Human Rights, Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories: situation of human rights in Guatemala, 8 March 1983, E/CN.4/RES/1983/37

¹⁰⁷ UN Commission on Human Rights, Question of human rights and fundamental freedoms in Afghanistan, 10 March 1988, E/CN.4/RES/1988/67

is a very modest step, given the magnitude of the problem, but it is an important beginning.”¹⁰⁸

McPherson from the Quaker Office decided to push a bit harder based on Cohen’s statement of demands with a draft resolution to be submitted to the 1991 session of the Commission on Human Rights. He “harbored no great expectations that the issue would be taken up...rather the statement would be a tool for engaging states in a dialogue on the issue” (Bagshaw 2005: 76). But it was this shot-in-the-dark move that led to the UN Secretary General’s 1992 *Analytical Report* on the human rights dimensions of IDPs because the Austrian government took up McPherson’s statement and sponsored the resolution that made the request of the Secretary General (Bagshaw 2005).

Soon after the *Analytical Report*, the demand for a special rapporteur on the rights and needs of internally displaced persons quickly gained momentum through media articles, statements, reports and other collective lobbying efforts. And by 1992, RPG attended the session of the UN Commission of Human Rights for the first time as a NGO with consultative status with the ECOSOC. Cohen had done quite a bit of legwork, and she notes in her 24 February 1992 memo to Dennis Gallagher, “Because of these efforts, RPG is known among NGOs, international organizations, and various governments as one of the main advocates, together with the Quaker UN Office, of Commission action on internally displaced persons.”¹⁰⁹

RPG was able to draw on more vocal support, than a year before, from Hungary, Austria, Norway, UNHCR and others who also supported RPG’s demand in their respective statements before the Commission. This was not

¹⁰⁸ Cohen, R. (1990) UN Human Rights Bodies Should Deal with the Internally Displaced, Statement before delegates of the UN Commission for Human Rights organized by the Quaker United Nations Office and WCC on 7 February 1990 in Geneva

¹⁰⁹ Memorandum from Roberta Cohen to Dennis Gallagher dated 24 February 1992, from the unarchived collection of the Brookings Institute

only the beginning of the legitimization of the RPG and broader NGO coalition on IDPs, but also the legitimization and recognition of the need for the international community and the UN to begin to consider the needs and rights of the internally displaced as an international concern, and no longer just a matter restricted to internal jurisdiction of states or just a domestic issue. The result was the adoption of an Austrian-sponsored resolution at the UN Commission on Human Rights without a vote at the end of its 48th session in 1992:

“Requests the Secretary General to designate a representative to seek again views and information from all governments on the human rights issues related to internally displaced persons, including an examination of existing international human rights, humanitarian and refugee law and standards and their applicability to the protection of and relief assistance to internally displaced persons.

Encourages the Secretary General to seek views and information from the specialized agencies, relevant United Nations organs, regional inter-governmental and non-governmental organizations and experts in all regions on these issues...and the Ad Hoc Working Group on Early Warning regarding New Flows of Refugees on Displaced Persons established by the Administrative Committee on Coordination...

Requests the Secretary General to present a comprehensive study to the Commission at its forty-ninth session identifying existing laws and mechanisms for the protection of the internally displaced, possible additional measures to strengthen the implementation of these laws and mechanisms and alternatives for addressing

protection needs not adequately covered by existing instruments.”¹¹⁰

6.2.1.2. IDP Agenda Setters Get Their UN Ally

Francis Deng, a Sudanese Diplomat, was appointed as the first Representative of the UN Secretary General on Internally Displaced Persons soon after the adoption of the 1992 Human Rights Commission resolution. Appointment of a thematic representative is one of the mechanisms at the disposal of the commission that it has used quite often to address concerns of human rights violations and human rights questions and matters that required further investigation. And as Martin McPherson of the Quaker UN Office stated in a fax to Roberta Cohen following the 1992 Commission resolution to appoint a representative, “It was the best we could get without a vote.”¹¹¹

A consensual no-vote resolution is the best kind of UN resolution. It has present and future bearing – in the here-and-now, a no-vote resolution means legitimacy rooted on a sturdy normative foundation because any negative vote would weaken its standing. A no-vote resolution “also had the advantage of silencing later critics, who could be reminded that the commission already had endorsed without reservation the very ideas to which they objected” (Weiss and Korn 2006: 23).

Initial reactions from states following the appointment of the Special Representative were mixed, as some of the communiqués between heads of state or their UN representative or other delegates and representative and Deng show. These letters were in response to Deng’s letter to governments seeking views and opinion on how to address the protection of IDP rights

¹¹⁰ Commission on Human Rights resolution on Internally Displaced Persons 1992/73, adopted on 5 March 1992

¹¹¹ Fax from Martin McPherson to Roberta Cohen dated 5 March 1992, from the unarchived collection of the Brookings Institute

beginning with the definition of IDPs. The responses he received were also indications about the desired international response and approach states foresaw; a few states opposed the very idea of any international engagement on internal displacement:

“We believe that your mandate is extremely important and we wish to support you in fulfilling your objectives...We are enclosing copies of U.S. Government reports and statements on human rights, refugees and the internally displaced and will do our best to provide you with additional country-specific information...We would urge you to focus on identifying and furthering the implementation of existing mechanisms...At this time, we are not prepared to suggest that new mechanism or laws are, a priori, necessary to address the needs of the internally displaced.”¹¹²

There were similar welcoming and supporting responses from countries such as Norway, Austria. But some others made their oppositional stance clear from the start. China and Pakistan,¹¹³ for instance, responded with the lack of necessity to offer any views or opinions, as they did not have IDPs in their countries. Meanwhile, the NGO lobbying coalition continued its support by putting forward some of the most practical opinions. For instance, the International Catholic Migration Commission (ICMC), in their response to Deng, advocated for “the creation of an international instrument on the right of humanitarian intervention.” But recognizing the urgency of the IDP crisis against the length of time that a creation of a legal international instrument would take, also proposed “in the interim that the United Nations

¹¹² Letter from US Representative to the European Office of the UN, Morris Abram to Francis Deng dated 17 November 1992, from the unarchived collection of the Brookings Institute

¹¹³ Letter from the Permanent Mission of the People's Republic of China, dated 12 October 1992, GJ/92/047; Letter from the Permanent Mission of Pakistan, dated 13 November 1992, No.Pol-2/3/92, from the unarchived collection of the Brookings Institute

Commission on Human Rights elaborate Guidelines on Displaced Persons for adoption at the meeting scheduled for February and March 1993.”¹¹⁴

The Quakers were more positive about provisions in existing international standards that could be applied to IDPs. Once existing standards are compiled into a single document, they recommended that the Special Representative identify gaps and then draft guidelines to fill these lacunae and complement the existing standards. And like other organizations, such as Caritas, the Quakers too proposed mechanisms that could help ameliorate the situation of displacement, such as early warning systems to identify potential internal displacement or refugee flows.¹¹⁵

Still others, like the Unrepresented Nations and Peoples Organization (UNPO), highlighted that the categorization of IDPs still excluded those in “the de facto situation” that does not correspond to the “de jure recognition by the international community.” Here UNPO highlighted the precarious nature of the territorial dimension of internal displacement, for instance in the case of Iraqi Kurdistan.¹¹⁶ RPG’s missive to Deng was a more studied response with reports and statistics about the IDP situation in Africa. The comments, views, opinions poured in as was wanted and expected.

The UN Secretariat decided that the Secretary General and his Representative could not have been intended to operate separately, as could have been inferred from the resolution, and handed over the entire job to Deng (Weiss and Korn 2006). He prepared a single study that contained the compilation of views and comments from governments, NGOs, and a review of the existing humanitarian, human rights and refugee laws and

¹¹⁴ Letter from the International Catholic Migration Commission dated 29 October 1992, from the unarchived collection of the Brookings Institute

¹¹⁵ Letter from the Quaker United Nations Office, dated 2 November 1992; Letter from Caritas Internationalis, dated 5 November 1992 (Prot. No. DP 120/92), from the unarchived collection of the Brookings Institute

¹¹⁶ Letter from UNPO dated 2 November 1992, from the unarchived collection of the Brookings Institute

standards that could be applied to the protection and relief assistance of IDPs.

6.2.2. Road to the Guiding Principles 1993-1998

The road to the Principles was a bumpy ride. The bumps and hurdles were highlighted from the very first *Comprehensive Study* submitted to the Commission on Human Rights in 1993. Identification of IDPs for practical and functional purposes was a primary concern. “A balance needs to be struck,”¹¹⁷ states Deng’s comprehensive study, regarding defining IDPs. The only available global definition at the time was the one stated in the 1992 *Analytical Report* of the Secretary General. It stated that IDPs were “persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country”¹¹⁸

This was unnecessarily restrictive noted a few organizations like the IOM and WFP, and “could be interpreted to exclude persons who are internally displaced in small numbers,” observed the US. Meanwhile the ICRC was against a definition altogether as Deng thought for the ICRC the underlying concern appears to be that it “would be undesirable to distinguish between civilian populations displaced by armed conflict and those who have not been displaced, but whose needs are similar.” There were a few supporters like Jordan who agreed with the working definition, UNHCR who thought it was “a good starting point,” and UNESCO who thought it could use “slight modifications.”¹¹⁹

The other major bone of contention was regarding achieving a negotiable balance between the need for new standards relating to protection and

¹¹⁷ *Comprehensive Study*, E/CN.4/1993/35 (1993), para no.33

¹¹⁸ *Comprehensive Study*, E/CN.4/1993/35 (1993), para no.34

¹¹⁹ *Comprehensive Study*, E/CN.4/1993/35 (1993), para no.34-37

assistance of IDPs and better implementation of existing principles, laws and norms.¹²⁰ Deng suggested that those who were in favor and those who were against developing new norms were in fact sitting on two sides of the same policy fence: “Both are motivated by the same policy considerations. Those who consider the present law adequate want to strengthen its protection by reaffirming it and focusing attention on implementation and enforcement mechanisms. Those who advocate a new regime are particularly concerned that the internally displaced often suffer unusual hardships, deprivations and gross violations of human rights which require special attention and remedial measures.”¹²¹

Therefore in the concluding remarks of the report, Deng proposed not only a compilation of existing international standards that would be useful and relevant to the protection of rights of IDPs together with concurrent work on a more legally binding declaration or even convention, but also boldly proposed that UNHCR be designated to uphold the rights of IDPs by redefining its mandate, that the Commission on Human Rights set up an early warning mechanism, and that the Representative (i.e. Deng) be granted authority to study the various UN agencies to understand the protection gaps within them.¹²²

Treading with caution (Weiss and Korn 2006), the Commission on Human Rights resolved in 1993¹²³ to give Deng and his mission another two years. Appreciating his work, they also noted that Deng had “identified...the compilation of existing rules and norms and the question of general guiding principles to govern the treatment of internally displaced persons.” It was Austria’s word-craftsmanship, among other things, by removing the word

¹²⁰ *Comprehensive Study*, E/CN.4/1993/35 (1993), para no.55 and para no.71

¹²¹ *Comprehensive Study*, E/CN.4/1993/35 (1993), para no.71

¹²² *Comprehensive Study*, E/CN.4/1993/35 (1993), para no.262-294

¹²³ Commission on Human Rights resolution on Internally Displaced Persons, adopted on 11 March 1993, E/CN.4/RES/1993/95

“legal” from the phrase “existing legal rules and norms” that perhaps made this resolution more palatable for many states (Weiss and Korn 2006).

The resolution requested that the Representative “continue his work aimed at a better understanding of the general problems faced by internally displaced persons and their possible long-term solutions, with a view to identify, where required, ways and means for improved protection for and assistance to internally displaced persons.” Deng’s mandate and work was also provided a larger audience in this resolution, as the Commission on Human Rights requested annual reports to be submitted not only to the Commission, but also to the UN General Assembly. Though Weiss and Korn (2006) consider this was an amber light, Deng and team revved forward with his mission to formulate a compilation of existing rules and norms that led to the development of a normative framework (Bagshaw 2005) on protecting and assisting IDPs.

6.2.3. Relevant Parallel Developments within the UN

Meanwhile, since the early 1990s, the UN also initiated a couple of measures in an effort to address the humanitarian concerns of the complex emergencies that mushroomed since the end of the Cold War. This included the creation of the role of the Emergency Relief Coordinators (ERC) in 1991, the Department of Humanitarian Affairs (DHA), and the brief stint of the Inter-Agency Task Force on IDPs the following year.

It was a General Assembly resolution of 1991 that gave birth to the ERC in its 34th paragraph of the annexed 42 guiding principles that aimed, as the title of the resolution states, to strengthen the coordination of humanitarian emergency assistance of the United Nations.¹²⁴ The DHA was created from the UN Disaster Relief Office created by the UNGA in 1972 (Forsythe 2009),

¹²⁴ UN General Assembly resolution on Strengthening of the coordination of humanitarian emergency assistance of the United Nations, A/RES/46/182

which became the Office for the Coordination of Humanitarian Affairs (OCHA) in 1997. Both the mandate of the ERC and DHA were limited to assistance with no elbowroom on issues of IDP protection (Weis and Korn 2006). There may have been a broader mandate for the DHA, as one of the suggestions at the time of its creation was to set it up as a Department for Humanitarian Affairs and Human Rights. It was considered too radical for the time (Duffield 2001).

It was the Inter-Agency Standing Committee (IASC) chaired by the ERC that designated the ERC as the “focal point” for IDPs in 1994, however with little effectiveness (Deng and Cohen 1998). The IASC also set up in 1992 a task force on IDPs that helped shape some policy issues around internal displacement in the mid-1990s. This was enabled by the recommendation of the Task Force itself to broaden its mandate to include not only analysis of specific situations of internal displacement, but also assistance and protection issues of IDPs and national and international capacity to deal with them. The Task Force was deactivated in 1997, and quietly transferred its mandate to the IASC Working Group (IASC-WG). This was also a time when the UN was undergoing reform especially following the humanitarian debacle in Bosnia. “Internal displacement became a permanent agenda item for the IASC” (Orchard 2015: 305). So, unlike in the Task Force when the Special Representative was invited only when IDP matters were discussed, Deng was a “standing invitee” to all meetings of the IASC Working Group (Deng and Cohen 1998). This was an advantage for Deng, his associates and allies who were not only nearing the end of the development of the Guiding Principles¹²⁵, but also hoped that internal displacement may be mainstreamed into UN discourse.

6.2.4. Moving Closer to Formulating the Guiding Principles

¹²⁵ In fact, the Guiding Principles were first presented at the IASC and received its endorsement. The UN Commission on Human Rights could not ignore this IASC action (Weiss and Korn 2006: 65).

In addition to institutional mainstreaming of issues pertaining to IDPs, the main aim of most of those who advocated for strong international engagement on internal displacement was a normative framework that addressed the assistance and protection of those internally displaced. The task of compiling relevant existing norms was the basis for developing a new normative framework on internal displacement. The compilation that did not receive explicit mention – except for a perambulatory reference – in the 1993 Commission on Human Rights resolution, got the green light in the 1994 and 1995 resolutions in which Deng was encouraged to continue his work, “including his compilation and analysis of existing rules and norms.”¹²⁶

Austria took the lead in supporting Deng and his team in drafting the compilation of existing rules and norms. The Austrian draft, which was rights based, was completed by the Ludwig Boltzmann Institute of Human Rights in Vienna, under the leadership of Prof. Manfred Nowak. In America, Roberta Cohen turned to the Washington-based International Human Rights Law Group, and together with the American Society of International Law (ASIL), a second study was produced that was needs based. The two studies were tabled at the 1994 Austrian-hosted Legal Roundtable in Vienna (Weiss and Korn 2006).

In the final statement of experts, it was recommended that the two studies be merged based on the need-based study, which would then allow the corresponding body of principles to follow a rights approach.¹²⁷ This was a Herculean task that needed the panache of both a scholar and diplomat. Prof. Walter Kälin – who later took Deng’s place as the second Special Representative – was selected for the job. He chaired a meeting of the

¹²⁶ Commission on Human Rights Resolution on Internally Displaced Persons, adopted on 9 March 1994, E/CN.4/RES/1994/68; Commission on Human Rights resolution on Internally Displaced Persons, adopted on 3 March 1995, E/CN.4/RES/1995/57. The 1995 resolution also extended the Representative’s mandate for another three years.

¹²⁷ *Final Statement of Experts* from the Legal Round Table on Internally Displaced Persons, on 1-2 October 1994 in Vienna, Austria

Austrian and American legal experts in May 1995 in Geneva, and then merged the two studies into one compilation of over 100 pages, which was submitted to the Commission on Human Rights in the spring of 1996 (Weiss and Korn 2006).

Of special interest to note here is that though the word “legal” was cautiously dropped out of the resolutions that made Deng and his team’s work to compile existing rules and norms relevant to IDPs possible, it found its way back into the final submission before the Commission. It was titled the *Compilation and Analysis of Legal Norms*.¹²⁸ The Compilation that was presented in 1996 ran over 100 pages but excluded provisions on protection from displacement. As this was considered a pertinent issue, a second part to the Compilation¹²⁹ that dealt exclusively and comprehensively with various nuances of the protection from displacement was presented in 1998 almost simultaneously with the Principles.

One development that has been left out of much of the writing on the Guiding Principles is the work of the International Law Association (ILA), and the setting up of their committee on internal displacement in 1992. ILA’s work ran parallel to that of Deng and his team. Their primary aim was a bit more ambitious than that set out by Deng. According to the co-rapporteur of the ILA Committee, Prof. Rainer Hofmann, “Its primary aim is to develop draft principles of *international law governing the legal status* of internally displaced persons.”¹³⁰ This independent group of international legal experts developed a body of international law that was first different from the scope and nature of the Principles. But as the ILA Committee began producing

¹²⁸ Report of the Representative of the Secretary General, Mr Francis M. Deng, submitted pursuant to the Commission of Human Rights resolution 1995/57, *Compilation and Analysis of Legal Norms*, E/CN.4/1996/52/Add.2

¹²⁹ *Compilation and Analysis of Legal Norms, Part II: Legal Aspects Relating to the Protection against Arbitrary Displacement*, E/CN.4/1998/53/Add.1

¹³⁰ *Preliminary Report* of the ILA Committee on Internally Displaced Persons submitted by Rainer Hofmann at the 66th Conference of the International Law Association, 14-20 August 1994, Buenos Aires, Argentina (emphasis added)

drafts, they followed closely with Deng's work submitted to the UN. In fact, Bagshaw (2005) claims that the *1996 Compilation and Analysis* draws on drafts prepared by expert bodies, such as the ILA.

Though Deng and ILA's teams were drawing on each other, they were also working on their Principles and Declaration respectively simultaneously, at least till Deng requested that the ILA defer its work in 1997 till the finalization of the Principles. In a May 1997 letter to the Chairman of the ILA Committee, Dr. Luke T. Lee, Prof. Hofmann understands Deng's request as an "effort to avoid any uncoordinated and possibly conflicting approaches" in the task to improve to legal status of IDPs. But he failed to see why the ILA Committee should defer their work.¹³¹ The ILA Committee continued their work producing draft Declarations in 1998, and even one at their London Conference in 2000.¹³² In the meantime, members of the ILA Committee including Prof. Hofmann actively participated, upon invitation by Deng, in the drafting of the Principles.

In a recent email correspondence with Roberta Cohen, she explained why a body of principles was preferred to a Declaration: "two reasons really -- 1) there was great political sensitivity at the time about a legal framework for IDPs, and while a declaration was discussed among the legal team, we decided that Guiding Principles were more likely to gain acceptance; 2) Guiding Principles also made sense because no new law needed to be created."¹³³

But even with the possibility of framing a body of Guiding Principles, Cohen and her colleagues were cautious as stated in a memo she drafted soon

¹³¹ Letter from Prof. Rainer Hofmann to Dr. Luke T. Lee dated 27 May 1997, from the unarchived collection of the Brookings Institute

¹³² Report and Draft Declaration for consideration at the 2000 Conference of the International Law Association Committee on Internally Displaced Persons, from the unarchived collection of the Brookings Institute

¹³³ Email from Roberta Cohen to this researcher dated 10 March 2015, from the unarchived collection of the Brookings Institute

after the 1996 Commission resolution: “The debate in the Commission, however, suggests that it will not be easy to mobilize support quickly for the adoption of a body of principles.” Her fears were based on the developments, or lack thereof, in the adoption of the Declaration on Minimum Humanitarian Standards.¹³⁴ Nevertheless, work on the Principles was made possible through the 1996 resolution of the Commission on Human Rights that called upon “the representative of the Secretary-General to continue, on the basis of his compilation and analysis of legal norms, to develop an appropriate framework in this regard for the protection of internally displaced persons.”¹³⁵

From mid-1996 until early 1998, several rounds of meetings between groups of experts continued alongside efforts to gather comments on various drafts of the Principles, and garnering support for the process and the Principles themselves. This culminated in the experts’ meeting in Vienna on 17-18 January 1998 (Weiss and Korn 2006). The next months saw intense lobbying in the run up to the 1998 Commission on Human Rights session that would not only receive the Principles, but would also take up the extension of the Representative’s mandate.

As Weiss and Korn (2006) elaborate, Robert Goldman lobbied with the Latin American states backed by his appointment to the Inter-American Commission on Human Rights. Adama Dieng, the Norwegian Refugee Council and other NGOs together with Deng worked on the African nations from Geneva. Roberta Cohen was presented with the perfect lobbying opportunity as she was requested to join the US delegation to that year’s Commission as a public member. She agreed with the guarantee that she would address the Commission on the issue of IDPs. Cohen was also given

¹³⁴ Memorandum (confidential) from Roberta Cohen to Francis Deng, Robert Goldman, Daniel Helle, Walter Kälin, Manfred Nowak, and Maria Stavropoulou dated 20 June 1996, from the unarchived collection of the Brookings Institute

¹³⁵ Commission on Human Rights resolution on Internally Displaced Persons, adopted on 19 April 1996, E/CN.4/RES/1996/52

responsibility to deal with the Commission's annual resolution on migrants, which was her carrot-and-stick to deal with the Mexican delegation that led the team that raised objections to the Principles (Weiss and Korn 2006: 66).

In the end, the Austrian-led resolution was still worded cautiously. The draft resolution that contained the words, "Takes note with appreciation," was diluted to "Takes note." However, the resolution¹³⁶ did include the IASC's welcoming of the Guiding Principles and their decision to share them amongst executive members. A fuller acknowledgement of the Guiding Principles did not come until the following year's resolution in the Commission, and in the General Assembly in February 2000.¹³⁷

6.2.5. Analyzing the 1996, 1997 and 1998 Drafts of the Principles

Before delving into the nature, scope and content of the Principles, here is a brief comparative analysis of the several drafts of the Principles. This researcher has found four drafts – one from 1996, two from 1997 and one from 1998.¹³⁸ A brief comparative analysis is provided here to understand the shifts and changes the drafts went through to arrive at a final version.

The biggest shift in the drafts was the drastic change in the definition of IDPs. It was broadened to be as inclusive as possible, without unnecessary restrictions. This was one of the major achievements through the drafting process.

¹³⁶ Commission on Human Rights resolution on Internally Displaced Persons, adopted on 17 April 1998, E/CN.4/RES/1998/50

¹³⁷ Commission on Human Rights resolution on Internally Displaced Persons, adopted on 27 April 1999, E/CN.4/RES/1999/47; UN General Assembly resolution on the Protection of and Assistance to Internally Displaced Persons, adopted on 25 February 2000, A/RES/54/167

¹³⁸ All drafts of the Guiding Principles were retrieved from the unarchived collection of the Brookings Institute.

Table 4: Analysis of the Drafts of Guiding Principles

Analysis	1996	1997 (I)	1997 (II)	1998
Principles	27	29	28	30
Division	In three sections: P1-7 as general provisions. P8-23 as basic rights and fundamental freedoms. P24-27 as humanitarian assistance	Divided into five sections. P1-4 as general provisions. P5-9 related to protection from displacement. P10-23 related to protection of human rights during displacement. P24-29 related to international humanitarian assistance	P1-4 as general provisions. Section II (up to principle 8) related to protection from displacement. P9-22 as protection of human rights during displacement. P23-25 related to humanitarian operations. P26-28 related to return and reintegration of IDPs	Divided into five sections. P1-4 as general principles. P5-9 as protection from displacement. P10-23 as protection of human rights during displacement. P24-27 for humanitarian assistance. P29-30 for return and reintegration of IDPs

Definition	Used the very first definition that focused on “sudden and unexpected” displacement, and also included reference to “large numbers”	New definition without reference to “sudden and unexpected,” and “large numbers.”	New definition continued	New definition continued
Omission	Protection from arbitrary displacement not included; Prohibition of child recruitment excluded	Protection of humanitarian workers also missing		
Uniqueness	Right to Employment was listed separately (principle 23)	Additional protection for vulnerable groups such as pregnant women, children, elderly, etc. (principle 4)	Violation of arbitrary displacement clause to be remedied through restitution and	Additional protection for vulnerable groups such as pregnant women, children, elderly, etc.

			reparation to IDPs (principle 7); Additional protection for vulnerable groups such as pregnant women, children, elderly, etc. (principle 4)	(principle 4)
--	--	--	---	---------------

Another major achievement was the special focus on vulnerable groups such as women and children, whose rights and special needs were at the forefront of international deliberations through the 1990s as demonstrated in the preliminary case study of UNSCR 1325 in the previous chapter. The involvement of the Women's Commission in the drafting process had a great deal to play in the nuances of language and relevant focus on the matter of women and children.

But as one comprehensive statement on internal displacement, what are the meaning, power and legitimacy of the Guiding Principles? These issues are discussed in the next section.

6.3. Meaning, Power and Legitimacy by Replication and Particularization

Though it is a compilation of existing international “legal” standards, laws and norms, the Guiding Principles are still considered what many term as soft law, or soft law through restatement, or what others may call non-legal norms.¹³⁹ Its main characteristics are that they are non-binding, at times a precursor to making of hard laws, and also an easy way out in the event there is no international agreement on hard law.

So it is with the Guiding Principles. It is a non-binding instrument that restates in one set of statements the assistance and protection needs of the internally displaced – potential or real – before, during and after

¹³⁹ Abbott, K.W. and Snidal, D. (2000) Hard and Soft Law in International Governance, *International Organization*, Vol.54 No.3, pp.421-456; Goldstein, J., Kahler, M., Keohane, R.O., Slaughter, A-M. (2000) Introduction: Legalization and World Politics, *International Organization*, Vol.54 No.3, pp.385-399; Shelton, D. (2000) Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System, London and New York: Oxford University Press; Bagshaw, S. (2005) *Developing a Normative Framework for the Protection of Internally Displaced Persons*, New York: Transnational Publishers Inc.; Bothe, M. (1980) Legal and Non-Legal Norms – a meaningful distinction in international relations? *Netherlands Yearbook of International Law*, Vol.11, pp.65-95; Finnemore, M. (2000) Are Legal Norms Distinctive? *New York University Journal of International Law and Politics*, Vol.32, pp.669-705

displacement. As the ERC, Jan Egeland, mentions in the forward of the second edition of the Guiding Principles, it is “a critical tool” that enables a holistic response to the crises of internal displacement. It is also an “advocacy and monitoring” framework.¹⁴⁰ The primary scope of the Principles lies in the definition that not only identifies IDPs, but also defines the applicability of the instrument. The definition was no longer in the Guiding Principles as in the drafts, but was moved to an introductory section titled, scope and purpose.¹⁴¹ In these senses, the Guiding Principles establishes new norms because there is no other single instrument that provides one statement of international legal standards that apply to internal displacement.

What is not new is that it is a compilation of existing international laws and norms that already guarantees its existing power and legitimacy by extension on the issue of internal displacement. States, such as Mexico, India and others have questioned the legitimacy of the process of drafting the Principles that was not as inclusive of states as usual norm-creation processes are in the international sphere. However it was states, such as Austria and other co-sponsoring states that led to the drafting of the resolutions adopted in the Commission of Human Rights and in the General Assembly. Therefore, lack of legitimacy is not a claim that has standing.

Here is a closer look at the Principles that have been in use since 1998. The relevant sources of the laws and norms that each Principle draws on is referenced from the two Compilations and Analysis of Legal Norms:

¹⁴⁰ Forward to the second edition of the Guiding Principles by Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator, Jan Egeland

¹⁴¹ Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2

Table 5: Analysis of the Guiding Principles¹⁴²

Section	Principle	Provisions	Cascading Mechanism	Drawn from
I: General	1	Equality of IDPs before law Without prejudice to criminal responsibility before international law	Replication and Particularization Establishing hierarchy	UN Charter, UDHR, International Civil and Political Rights Covenant (ICCPR)
	2	Obligates all authorities to observe the Principles Put IHL and human rights laws, and right to seek asylum above Principles	As most soft laws do, Principles speaks to the world at large Establishes hierarchy	Situates IDPs as eligible and equal before for IHL and human rights laws. Replicates right of asylum from UDHR, American Declaration, African Charter
	3	Responsibility to protect	Replication	San Remo Principles

¹⁴² Each principle draws on multiple existing international norms; not all are mentioned against each principle.

		IDPs rests with national authorities, which IDPs may so request without fear		
	4	Non-discrimination Special attention to vulnerable groups	Replication	ICCPR (article 26), UDHR (articles 2 and 7), other conventions CEDAW (article 4)
II: Protection from Displacement	5	Upholding IHL and Human Rights laws to avoid displacement	Establishing primary of IHL and Human Rights laws	
	6	Protection from arbitrary displacement	Replication and particularization of freedom of movement	UDHR (article 13(1)), ICCPR (article 12(1)), Rights of Indigenous Peoples, etc.
	7	Provisions for proper displacement procedure	Replication of the derogation clauses set	

			into the laws mentioned in principle 6 above	
	8	Upholds the rights to life, dignity, liberty and security of those displaced in a proper manner	Replication and particularization within protection against displacement	UDHR (article 3), ICCPR (article 6(1))
	9	Responsibility of states to protect specific groups from displacement	Replication	Rights of indigenous peoples and more
III: Protection During Displacement	10	Right of life of those displaced during their displacement, protection against violence IDPs should be protected as civilians would be during war	Replication of right to life	UDHR (article 3), ICCPR (article 6(1)), Genocide Convention Geneva Conventions and Additional Protocol II

	11	Right to dignity, Added protection against violence of vulnerable groups	Replication and particularization	Foundational to human dignity is basic human rights as espoused by the UN Charter (articles 55 and 56), UDHR Geneva Conventions (common article 3) and Additional Protocol II (article 4)
	12	Protection from arbitrary arrests	Replication	UDHR (article 9), ICCPR (article 9(1))
	13	Safe from inhuman recruitment, especially of children	Replication and particularization in cases of IDP children	Convention on the Rights of a Child
	14	Freedom of movement	Replication	UDHR (article 13(1)), ICCPR (article 12(1)),
	15	Right to seek asylum	Replication and particularization	UDHR (article 14(1)), American Declaration (article

				XXVII), Vienna Declaration and Programme of Action
	16	Re-establish contact with missing/sick/dead family members	Replication	Fourth Geneva Convention (articles 25 and 26)
	17	Family unity and reunification	Replication and particularization	UDHR (article 16(3)), ICCPR (article 23(1), 24 (1)), ICESCR (article 10(1)), African Charter (article 18(1)), Refugee standards
	18	Basics of life	Replication	UDHR (article 25(1)), ICESCR (article 11(1)), CRC (article 27)
	19	Right to medical care	Replication	Geneva Conventions
	20	Issuance of ID documents	Replication and particularization	UDHR (article 6), CEDAW (article 16), CRC
	21	Right and protection of IDP property	Replication and particularization	UDHR (article 17)
	22	Fundamental rights –	Particularization	ICCPR (article 18), ICESCR

		thought, expression, employment, etc.		(article 6),
	23	Right to education	Replication and particularization	UDHR (article 26(1)), ICESCR (article 13(1)), CEDAW, CRC, and more
IV: Humanitarian Assistance	24	Should be delivered with humanity, impartiality and without discrimination	Replication	ICRC standards
	25	Shall in the first instance be provided by national authorities	Extension of the right to life responsibility	ICESCR (article 11)
	26	Protection of humanitarian workers	Replication	Additional protocol I and II (articles 9(1) and 11(1)), Convention on the Safety of United Nations and Associated Personnel
	27	Humanitarian workers must consider the	In special reference to ICRC and UNHCR	

		protection needs of IDPs	activities, and related mandates	
V: Return, resettlement, reintegration	28	Primary duty to enable return in safety and dignity lie with competent authorities	Particularized from right to freedom of movement	
	29	Competent authorities should help returned IDPs to resettle, and compensate for damaged or irreparable property	Replication and particularization	American convention, and precedent in the aftermath of the Iraq invasion of Kuwait where a UN compensation fund was set up (UNSCR 687 (1991))
	30	Give humanitarian actors access to help IDP return and resettle	Replication and particularization	Geneva Conventions and protocols

6.4. CONCLUSION

The Guiding Principles is unmistakably and admittedly a replicated and particularized compilation of existing humanitarian and human rights laws, norms and standard practices as the table above demonstrates. Yet it strengthens and advances norms on IDPs in its emergence as one relatively comprehensive statement of international norms that apply to internal displacement, having also set the scope, nature and parameters of what internal displacement means.

In the preliminary test cases in chapter 5, the mechanisms of replication and particularization of existing norms and intersubjective understandings had to be drawn out, while also revealing the genealogical underpinnings of the norm clusters. But in the case of the Guiding Principles, the approach used to develop the set of norms involved relying heavily on existing structures. This approach itself implies replication and particularization. However it still does not reveal what normative structures – meaning, power and legitimacy – are replication, particularized, or are cascaded before state adherence.

Three norm clusters are extracted here to continue with the next stage of the revised model in the following chapter:

Humanitarian cluster: One of the main concerns in situations of internal displacement is the inability to meet the humanitarian needs of IDPs. This primary concern demands that this cluster be further studied. Do norms of international humanitarianism differ in the case of internal displacement?

Sovereignty cluster: The foundation of the Principles is rooted in sovereignty as responsibility where the duties and responsibilities of the states are of paramount importance in order to assist and protect IDPs. What normative understandings underpin this cluster?

Citizenship cluster: This leads to the third cluster, which delves into the normative understandings of the legal status of IDPs now that the Principles have placed them on the fence between domestic and international jurisdiction. Where do they belong?

A genealogical exploration of these clusters will enable a deeper understanding of internalization of Principles in the next chapter.

Chapter 7.

DYNAMIC NORM CASCADING OF GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

“Internal displacement has emerged as one of the great human tragedies of our time. It has also created an unprecedented challenge for the international community: to find ways to respond to what is essentially an internal crisis.”

– Kofi Annan(as cited in the preface to Cohen and Deng 1998)

“It is hard to imagine an idea that is better than IDPs to illustrate the importance of crucial changes in discourse and reframing of possible solution to international challenges.”

– Thomas Weiss and David Korn (2006: 9)

The former UN Secretary General, Kofi Annan is right in labeling internal displacement as an unprecedented challenge for the international community as was illustrated in the previous chapter. It is dynamic, complex and embedded in a web of normative understandings that, more often than not, the international community has felt easier to avoid than address. And even at times when such crises have been addressed, it was not because it was any less complicated in nature or scope. Meanwhile, scholars such as Weiss and Korn are equally right in asserting that the crises of internal displacement, and the people that have been affected by it or been victim to it – the IDPs – has challenged international normative understandings creating a space for discourses to shift.

The previous chapter examined the first stage of the norm life cycle, the development and emergence of the UN Guiding Principles as an

international normative instrument. Chapter 6 examined this development much as the classical norm life cycle would, within the limited time frame of the 1980s up until 1998 when the Principles were noted in the Commission of Human Rights. This provided the basis for the second part of stage 1 of revised model, which not only includes the emergence of a norm, but also an evaluation of what the norm means and stands for. This chapter 7 continues the revised model from stage 2 that reveals the dynamic nature and processes of cascading of the clusters of norms the make up the Principles. This genealogical stage will enhance understanding of the normative underpinnings of the Guiding Principles, what it means, and how it constructs internal displacement and IDPs.

The clusters used in the genealogical examination, as extracted at the end of stage 1 in chapter 6 are: right vs. responsibility of states situated within the normative framework of sovereignty (sovereignty cluster), the question of the legal status of IDPs (citizenship cluster) and international humanitarian protection (humanitarian cluster). The choice of these clusters were motivated by the international debates that surrounded internal displacement and the development of the Guiding Principles. The stage 1 analysis of the early Guiding Principles drafts and its final version also substantiated the extraction of these three clusters. Sovereignty as responsibility was the ethos on which the Guiding Principles were framed, and thus this was an important cluster to examine. Studying the role and responsibility of the state in the context of internal displacement within the broader norm ecosystem of sovereignty, in turn meant a need for an enhanced understanding of the legal standing of a person in this regard. The citizenship cluster provides the space for this analysis. The choice of the final humanitarian cluster is based on the premise that humanitarian protection is at the root of international protection of civilians. Examination of this third cluster aims to situate the Guiding Principles in this well-established normative structure and to understand better its normative

underpinnings of humanitarianism. The interactions between these clusters are also analyzed.

7.1. STAGE 2 – Unpacking the Guiding Principles: A Normative Genealogy

“The Principles are intended to provide guidance to the Representative in carrying out his mandate; to States when faced with the phenomenon of displacement; to all other authorities, groups and persons in their relations with internally displaced persons; and to intergovernmental and non-governmental organizations when addressing internal displacement.”¹⁴³

This passage from the introduction to the Guiding Principles reveals the nature and scope of its normative foundations. As a normative structure or framework, it is not put forward as soft law, or an instrument with law-like character, or an instrument that restates existing international hard laws, as many have characterized it. Instead the UN presents it as a tool to provide guidance targeted at various agents, including the office and mandate of the Special Representative.

Though humble in its presentation, its normative foundations have deep roots. As has been claimed many times by its own drafters, the Guiding Principles are a compilation of existing international humanitarian and human rights norms, and draws on this robustness, sometimes in part, or in whole depending on the law that a principle was borrowed from.

But what normative understandings do the borrowed principles mirror? What intersubjective understandings have been extended, particularized, or replicated in the drafting of the Principles? The genealogical exploration of the clusters below aims to provide answers to these questions. For

¹⁴³ *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, para.10

purposes of the genealogy, internal displacement will be situated in broader parameters of displacement, as it cannot be studied in isolation. In this regard, displacement is defined, to use Stavropoulou's definition, broadly as the forced movement of people (Stavropoulou 1998).

7.1.1. Cluster 1: Sovereignty – Polity vs. People

Timeframe: 1945-1995

The rights and protection of people – in times of war and peace – as a responsibility of the state are well established as international laws and norms. Yet it is the rights and responsibilities of states established as norms of sovereignty that have often conflicted with these international laws, sometimes to the point of gross violations. Nevertheless, sovereignty is the very basis of the protection of people because protecting one's people and upholding their rights is an internal matter for a state – a responsibility of the sovereign. The Guiding Principles is rooted on the normative understanding of sovereignty as responsibility, and not just a right, as Deng (2001) explains: "I approach sovereignty not as a negative concept by which states barricade themselves against international scrutiny and involvement, but rather as a positive concept entailing responsibility for the protection and general welfare of the citizens and of those falling under state jurisdiction." Yet, webs of international norms intrude into this sovereign space reminding states of this responsibility, and, since the establishment of the International Criminal Court, punishing persons persecuting their people instead of protecting them. There is a norm cascading tension, and sometimes, even, collision.

This normative tension did not always exist. In the centuries before the Westphalia Treaty, sovereignty was vested in the king, emperor legitimated through the divine or the voice of god represented by the priest (Holmes, 1982). With the dawn of the Westphalian peace, some scholars –

international lawyers and international relations academics – mark the dawn of sovereignty, as it is known today (Gross 1948). But others contest the attribution of the birth of modern sovereignty to the Westphalian peace. Osiander (2001: 266) states that the Westphalian treaty was nowhere close to a conception of sovereignty. “The Peace of Westphalia proper was an agreement between only three parties. It consists of two treaties signed on 24 October 1648, one – the Treaty of Munster between the Holy Roman Empire and the King of France, and the other – the Treaty of Osnabriick between the Holy Roman Empire and the Queen of Sweden.”

This was not about sovereignty but about the continued survival, in an improved way, of the Empire through “territorial jurisdiction” which is often mistaken for territorial sovereignty. Territorial jurisdiction is more in line with the meaning of state sovereignty, which is “defined in terms of the territories over which institutional authorities exercise legitimate control,” while national sovereignty or nations is “defined in terms of communities of sentiment that form the political basis on which state authority rests” (Barkin and Cronin 1994: 110-111). This means that people and their voices did not have primacy of place; the principle of the legitimate state came through pacts and associations between states and not the people governed within respective territories. Sovereignty as territorial jurisdiction lasted up until the First World War.

The shift in the meaning of sovereignty from state sovereignty of the pre-WWI period to national sovereignty in the post-WWI phase was driven by US President Woodrow Wilson – the norm entrepreneur/(re)maker at this time – in his Fourteen Point proposal for world peace (Fraser, 1999). He elevates the importance of the sovereignty of peoples to that of states and governments thus, in point 5: “A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of

the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.”

The shifting primacy of the polity over people is what led to the conflict in norms. Interestingly, as the genealogical exploration in this cluster will reveal, though people, their needs and rights, gained in importance as revealed in the first cluster above, the significance of the state and its norms of sovereignty did not shift or cascade accordingly, or loosen up as many claim. However, the norms of sovereignty did cascade, and how, will be explored in this cluster.

The examination in this cluster will focus on those norms related to sovereignty in relation to forced displacement, and as relevant to this research. The fundamental norm in this regard is the freedom of movement and its corollaries, such as protection from displacement, protection against arbitrary displacement, right to seek and enjoy asylum and the like. These are not explicit legal provisions in international humanitarian or human rights laws, but the forced movement of populations or displacement increasingly emerged as a “distinct violation of customary international law” and “gross violation of fundamental freedoms including freedom of movement” (Simons 2002).

Interestingly, the mass and forced flight of people, especially across territorial borders also gradually became associated with the violation of sovereignty and threat to international peace and security, as stated in the UNSC Resolution 688 on Iraq¹⁴⁴. This conflict of normative understandings is critically explored in this cluster.

¹⁴⁴ “Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions, which threaten international peace and security in the region” UN Security Council Resolution adopted on 5 April 1991 at the 2982nd meeting, S/RES/688 (1991)

7.1.1.1. *Free to Move: Three-way Friction between Person, Nation and State*

The basic fundamental existential necessity not to be bound by space and time is the true essence of the universal right of the freedom of movement ¹⁴⁵. Satvinder Juss' (2004: 289-290) explanation on the fundamentality of this freedom is apt here: "Without it, other rights are precarious. Universally recognized values, such as mutual aid, humanity, hospitality, comity, mutual intercourse, and good faith, all depend on the right to free movement for their efficacy. The world order depends on freedom of movement. Whether one is looking at the encouragement of peace by the easing of demographic pressures, or the enrichment of national cultures, or the redistribution of economic resources, or the pursuit of humanitarian objectives, freedom of movement has a central role to play in the modern global order. All are fundamentally interconnected and indivisible from one another."

This essential nature of this right has also been recognized in a 1988 report of the Sub-commission on Prevention of Discrimination and Protection of Minorities:

"Freedom of movement is a constituent element of personal liberty... The prohibition against arbitrary arrest, detention or exile, and the right to seek and to enjoy in other countries asylum from persecution reinforce the implementation of the right to leave. The rights to freedom of thought, conscience and religion and freedom of expression, in particular the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, require freedom of movement for their full realization."¹⁴⁶

¹⁴⁵ Article 13 of the *Universal Declaration of Human Rights*, adopted on 10 December 1948, 217 A (III)

¹⁴⁶ Final Report on *The Right of Everyone to Leave Any Country, Including His Own, And to Return to His Country*, submitted by the Sub-commission on Prevention of Discrimination and Protection of Minorities, at the 40th Session of the Commission on Human Rights, 20 June 1988, E/CN.4/Sub.2/1988/35

As much as it is relevant the modern global order, the freedom of movement is derived from the much longer and older tradition of the “concept of liberty,” according to McAdam (2011)¹⁴⁷ who links it to classical philosophical and legal traditions. This research is however concerned with its twentieth century constructions of (1) right to move freely within a state’s borders, which includes choice of residence that will be addressed in the next cluster on citizenship (2) right to leave one’s country and return, and (3) right to seek and enjoy in other countries asylum from persecution. All these are directly relevant to the displacement discourse.

However, this construct of the freedom of movement causes normative friction with the construct of sovereignty. The former is a right of a human, whereas the latter is a right of a state. As McAdam (2011: 47) points out: “...the right to leave a country is not paralleled by a concomitant right to enter any country other than one’s own.” So though the right is granted, an equal obligation is not required of states to exercise or actualize this right. Such an explicit obligation would infringe on the very foundation of sovereignty. States have their own policies – immigration, extradition, refugee status determination, and others – that prevail over, and are sometimes contradictory to the rights enshrined in the fundamental freedom of movement.

7.1.1.1.1. An Analysis

This confrontation between the norms of freedom of movement as a human right and the norms of sovereignty as a prerogative of the state, an especially binding force at the level of the international community of states, is at the core of the displacement discourse and the cascading of norms within it. The territorial dimension – the right to cross international borders at

¹⁴⁷ However McAdam separates the right to return from the right to leave, and combines it with the right to seek and enjoy asylum. This present research does not adopt McAdam’s approach.

will vs. a state's right to protect its borders – is only one part of the normative friction. National sovereignty, which goes beyond defined borders and identifies with a defined population, is another part. According to Barkin and Cronin (1994), though national sovereignty was given international precedence after the First World War, a normative reconstruction – a reconfiguration that could always cause normative friction – was embedded into the international institutionalization of the global order with the establishment of the UN Charter.

Here Barkin and Cronin's (1994: 123) analysis is apt. "The charter affirms as the first purpose of the UN the maintenance of international peace and security. It defines this as the prevention of the violation of established state borders by the forces of other states. This clearly establishes the priority of the integrity of established state borders over the integrity of national or nationalist groups. The charter also affirms the principle of the self-determination of peoples, but not of nations...As long as a state adequately represents its people as individuals, other states cannot legitimately claim to represent some of these people as members of its nation."

State Acceptance of Norms in Numbers

Norms of Rights of Man vs. Norms of Rights of State			
Freedom of Movement	St. Parties	Sovereignty	St. Parties
1945 Charter of the United Nations			193 (49 original parties, and 144 members admitted) ¹⁴⁸
1948 Universal Declaration of Human	48 in favour + 8 abstentions ¹⁴⁹		

¹⁴⁸ UN Treaty Collection

¹⁴⁹ OHCHR, Factsheet No.2 (Rev.1) on the International Bill Human Rights, available online: <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

Rights adopted by UNGA resolution (also makes reference to primacy of sovereignty)			
International Covenant of Civil and Political Rights 1966 (also makes reference to primacy of sovereignty)	168 ¹⁵⁰		

So by reducing the construct of a nation to that of individuals, the state as a territorial construct is replicated as a priority. Examination of state acceptance of the UN Charter by numbers alone might make the UN Charter seem more powerful and legitimate than the Declaration of Rights or the ICCPR. However, the UN Charter also affirms respect for human rights not only in its preamble, but also as its main purpose stated in paragraph 2 of article 1, and encourages the realization of human rights for all in more articles in the Charter than it mentions sovereign equality.¹⁵¹ But the Declaration and its reflection in the UN Charter have diminished moral force, according to Lauterpacht, because of the “absence of any sacrifice of sovereignty ‘on the altar of the inalienable rights of man’” (Bernstorff 2008: 908). Though human rights have gained international ground, the inviolable norm of sovereignty remains fundamental to the international community. What has changed is that these two spheres of norms constantly interact and clash since 1945, which is very much part of the norm cascading process.

Within the parameters of this research, and the case study of the Guiding Principles on Internal Displacement, this normative tension between

¹⁵⁰ Numbers accessed from UN Treaty Collection Database

¹⁵¹ *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, articles 13, 55, 68, and 76 promote or encourage the respect for, or realization of human rights for all.

sovereignty and the right to freedom of movement has caused the provisions of the right to be in a state of flux. This relates to the constituent points 2 and 3 above – leaving one’s country and seeking and enjoying asylum in another country respectively, which is most obvious in the cascading of refugee norms particularly in the right of asylum. The right to move freely in one’s country will be discussed later. Though, functionally and legally, the two forced displacement groups – IDPs and refugees – have been separated and kept apart, their normative evolution and cascading are intertwined.

7.1.1.2. Asylum: From A Right to Diminished Responsibility

The fundamentality of sovereignty – state and nation – has come under intense normative pressure from the international institution of asylum that is practiced and realized at a state level. Asylum – a practice that has ancient roots¹⁵² – embodies not only the right of freedom of movement, but it is also a response in the event of its violation and thereby can seek the protection of one’s rights in another country. The roots of the practice of asylum in the twentieth century lie in the UDHR: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”¹⁵³

This construction of the right to seek asylum does two things. First, it identifies that individuals have this right and in turn lays the foundation of the categorization of such individuals. In so granting this right, it also separates the individual from the state indicating that the state does not have a claim over the individual (Boed 1994). Second, though asylum is framed as a right, it is very much rooted in the norms of sovereignty as well. The right to seek asylum can only be realized in a country that is not one’s own,

¹⁵² Price, M.E. (2005) Politics and Humanitarianism? Recovering the Political Roots of Asylum, *Georgetown Immigration Law Journal*, Vol.19 No.2, pp.277-311; Arbodela, E. and Hoy, I. (1993) The Convention Refugee Definition in the West: Disharmony of Interpretation and Application, *International Journal of Refugee Law*, Vol.5 No.1, pp.66-90

¹⁵³ Article 14(1) of the *Universal Declaration of Human Rights*, adopted on 10 December 1948, 217 A (III)

meaning that international borders have to be crossed. The nature of the crossing – voluntary or forced – is not emphasized but the right of asylum is sought from persecution, a term that legally also remains vague (Price 2005, and Arbodela and Hoy 1993).

The realization of the construct of the norms of asylum, however, does not lie in seeking it, but in enjoying it. This can be made possible only by actions on the part of the state granting asylum, which is not obligatory on the part of the state. The obligation was removed in the drafting of the UDHR by an amendment¹⁵⁴ proposed by the British delegate. This was how the right to seek and “to be granted” asylum was amended to to seek and “to enjoy” asylum (Nayar 1972). At the third committee of the UNGA in 1948 that considered the draft UDHR, the British amendment was voted 30 to 1 with 12 abstentions (Weiss 1969). Granting asylum is the prerogative of the state, not the right of an individual, as stated by Morgenstern (1949: 327): “A competence to grant asylum thus derives directly from the territorial sovereignty of states.” The norms of sovereignty were so strong in the post World War II and Cold War periods that in the drafting of the international covenant of rights, the right of asylum was excluded, as it was deemed not a human right (Nayar 1972).

7.1.1.2.1. Asylum in the Context of Forced Displacement

The drafting of the international human rights covenants and the refugee convention were underway in the same years, though the covenant took much longer to be completed and adopted. With the increasing number of refugees in the aftermath of the Second World War and the absence of a right of asylum in the covenant and convention drafts, the Director General of the then International Refugee Organization expressed his concern in a communication to the Commission on Human Rights:

¹⁵⁴ Amendment by the United Kingdom to the Preamble and Article 12 of the Draft Declaration E/800, submitted on 11 October 1948, A/C.3/253

“...there is an urgent need to attempt to secure international recognition for measures designed to, implement "the provisions of Article 14 of the Declaration on Human Rights, paragraph 1, in which it is stated that everyone has the right to seek and to enjoy in other countries asylum from persecution. If the general right of the individual to seek and enjoy asylum is recognized it is necessary to attempt to define whose responsibility it is to give effect to this right. Although it is the sovereign right of States to regulate the admission of aliens, nevertheless their policy of admission should be implemented by the Members of the United Nations in such a way that consideration is given to the right of the individual to seek asylum.”¹⁵⁵

The closest the international community came to legalizing some form of right of asylum is in the provisions against punitive measures for illegal entry, expulsion and refoulement in the Refugee Convention.¹⁵⁶ In fact, asylum itself is only mentioned once in the preamble to the convention, as recognition of the need for international cooperation in easing the “heavy burdens on certain countries” in granting of asylum.¹⁵⁷ And to ensure that the roots of sovereignty vis-à-vis asylum were intact, the UNGA adopted a Declaration on Territorial Asylum on 14 December 1967¹⁵⁸ that emphasized that the granting of asylum was in exercise of a state’s sovereignty, and that the decision to grant asylum rested with the state.¹⁵⁹ The issue of

¹⁵⁵ Communication from the Director General of the International Refugee Organization to the Sixth Session of the Commission on Human Rights, 30 March 1950, E/CN.4/392

¹⁵⁶ Articles 31, 32 and 33 of the *Convention Relating to the Status of Refugees*, adopted on 28 July 1951, UNTS, Vol. 189, p. 137

¹⁵⁷ Preamble to the *Convention Relating to the Status of Refugees*, adopted on 28 July 1951, UNTS, Vol. 189, p. 137

¹⁵⁸ A decade later an international effort to draft a convention on territorial asylum ended disastrously

¹⁵⁹ Article 1(1) and 1(3) of the *Declaration on Territorial Asylum*, adopted on 14 December 1967, A/RES/2312(XXII)

sovereignty was reiterated again in the Declaration in that the situation of the asylum seeker has no bearing on the sovereignty of states.¹⁶⁰

7.1.1.2.2. An Analysis

The cascading of norms of sovereignty overpowered the cascading of human rights, especially with regard to the freedom of movement and right of asylum. In the moments of norm conflict, the norms of sovereignty prevailed. It would seem that norms of sovereignty was accepted by states to have a higher norm status, especially because respect for, and the realization of human rights for all at the national level depended on respect for, and realization of sovereign equality at the international level.

State Acceptance of Norms in Numbers

The Normative Instrument	State Parties
1948 Universal Declaration of Human Rights adopted by UNGA resolution	48 in favour + 8 abstentions
1951 Convention Relating to the Status of Refugees	145 ¹⁶¹
1967 Protocol to the Convention Relating to the Status of Refugees	146 ¹⁶²
1967 UNGA Declaration on Territorial Asylum	Unanimous ¹⁶³

Though the right to seek and enjoy asylum is rooted in the UDHR, it is not normatively accepted as a right in practice. One reason could be that it is not an international right legalized through the covenants. Another reason could be that it is institutionalized in the Refugee Convention, and thus realized in practice as a humanitarian response to those forced to leave their homes and countries and are in need of immediate protection. In this regard

¹⁶⁰ Article 2(1) of the *Declaration on Territorial Asylum*, adopted on 14 December 1967, A/RES/2312(XXII)

¹⁶¹ Data from the records of the United Nations High Commissioner for Refugees: <http://www.unhcr.org/3b73b0d63.html>

¹⁶² Ibid.

¹⁶³ Official Records of the 22nd Session of the UN General Assembly, A/6912

the sovereignty cluster is intertwined with the humanitarian cluster that is elaborated later in the chapter. And a refugee by definition is temporary state of being, a state that ceases to be when the persecution, or fear of it ends. Therefore the normative understandings of asylum as a right were torn asunder.

7.1.1.3. Containing Displacement. Deterring Asylum

The burden of granting asylum grew with the increasing number of refugees from the early 1970s, and growing mass flight by the end of the Cold War. The international community of sovereign states was coming together to cooperate on bearing the burden of granting asylum, but it was a growing international cooperation towards lesser asylum, not more. This shift in the practice of granting asylum also had implications for internal displacement.

Many have decried this global shift in refugee norms. Some, like Keely (2011) have suggested the existence of parallel frameworks of refugee norms – one in the Western countries setup to admit and resettle those fleeing communist oppression; there was nothing temporary in this arrangement. The other system was the one managed and operated by the UNHCR, which provided temporary protection and humanitarian assistance as its mandate allowed from its inception. By the end of the Cold War, even this palliative role of the UNHCR was being distorted with a growing role for the refugee agency (Hathaway 1995). For this UNHCR, the changes included “the extension in UNHCR practice of the categories of people it assists; the increased focus of many agencies on preventive action, even within countries at war, to reduce the likelihood of massive refugee flows across borders” (Roberts 1998: 375). This extension of the UNHCR’s role also extended to IDPs. As early as 1972, UNHCR assisted the repatriation and resettlement of displaced Sudanese inside and abroad.¹⁶⁴

¹⁶⁴ UN General Assembly Resolution on Assistance to Sudanese Refugees Returning from Abroad, adopted on 12 December 1972, 2958 (XXVII)

This shift is evident in the acceptance numbers of asylum applications through the 1980s up until 1991. Though the asylum applications rose, the recognition rates fell, notes Rosemarie Rogers (1992: 1122): “According to Widgren (1991: 4), on average 70 percent of asylum applications in Europe are not recognized after thorough scrutiny in the first and second instance, and that percentage is growing.” Policies at national and international levels were aiding the shift in normative practice, went from reduced asylum and temporary protection, to outright policies of containment of displaced persons.

7.1.1.3.1. Humane Deterrence: Keeping a Lid on It

Shifts in political attitudes towards refugees and asylum seekers translated into concrete policies and strategies of ‘humane deterrence’. Misleading in its terminology, ‘humane deterrence’ policies were first implemented in the early 1980s in response to the Indo-Chinese influx into South-east Asia (McNamara 1990). Known as the boatpeople, these were the hundreds and thousands that fled the violence of the fall of Phnom Penh and Saigon in April 1975. By 1977, the exoduses into the many South-east Asian nations reached critical mass and became a problem these governments no longer wanted to address, but wanted to get rid of. By June 1979, the foreign ministers of the South East Asian countries did exactly this at the ASEAN meeting:

“The Foreign Ministers stressed that ASEAN countries which had become a heavy burden of providing temporary shelter to the illegal immigrants/displaced persons (refugees) have reached the limit of their endurance and have decided they would not accept any new arrivals. *They reiterated the decision of ASEAN countries to take firm and effective measures to prevent further inflow of illegal immigrants/displaced persons (refugees).* The Foreign Ministers gave notice that the ASEAN countries

would send out the illegal immigrants/displaced persons (refugees) in their existing camps should they not be accepted by resettlement countries, or by the respective Indochinese countries within a reasonable time-frame, and in the absence of any arrangements to the contrary. To ensure the effectiveness of these measures, the Foreign Ministers agreed to coordinate the effort, of their respective governments.”¹⁶⁵

This decision was endorsed at an UN-sponsored meeting of governments in Geneva in July 1979. Following, the implementation of this decision, boat arrivals reduced within a few months together with dramatic two-third decrease in Vietnamese camps in South-east Asia owing to a massive third-country resettlement operation. The ASEAN move gave Thailand the support it needed to deal with the increasing numbers of Laotian refugees pouring in. Thai authorities claimed “the newcomers were...common economic adventurers rather than people fleeing danger, attracted by camps in Thailand...clearly visible from the Laotian side and which provided relatively secure and comfortable conditions in which to await selection by third countries” (McNamara 1990: 126).

Thai authorities tried stricter apprehension measures to return Laotians to their country, but it did not have any impact on the arrival numbers. Then together with the UNHCR, the Thai authorities pieced together a ‘humane deterrence’ proposal suggested by the UNHCR officials in Bangkok. The proposal involved a two-pronged approach. Firstly the Nong Khai camp on the border with Laos would remain closed to all new arrivals. This meant the opening of another camp away from the border. Secondly, activities of international voluntary organization in the camps aimed at resettlement operations would be largely restricted. This ‘humane deterrence’ strategy’ was officially implemented by the Thai government in 1981 with “austere

¹⁶⁵ *Joint Communiqué of The Twelfth ASEAN Ministerial Meeting* Bali, 28-30 June 1979, <http://www.aseansec.org/1242.htm>, accessed on 10 January 2011

camp conditions; the denial of resettlement processing to new arrivals and, at least implicitly, renewed efforts to apprehend and expel arrivals at the border” (McNamara 1990: 127). Several resettlement countries implicitly or explicitly gave their blessings to this Thai strategy.

7.1.1.3.2. *From Deterring to Averting Refugee Flows*

The 1980s also saw an international move through the UN spearheaded with West Germany playing a leading role that put more pressure on source countries to reduce and avert refugee flows. The core of the UNGA resolution that solidified this international move was in its emphasis on “considering, in addition to humanitarian and social relief, suitable means to avert new flows of refugees,” which the UN believed was caused by the “policies and practices of oppressive and racist regimes as well as aggression, alien domination and foreign occupation.”¹⁶⁶ This led to the establishment of a Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees a year later.¹⁶⁷ The Group submitted their report to the UNGA through the Secretary General with seven very modest recommendations. They were nothing new but reiterated adherence to existing norms, practices, laws, and urged member states to exercise their sovereignties to avert all new flows of refugees by ameliorating or eliminating the root causes of refugee flows.¹⁶⁸

Instances of humanitarian interventions, some of them military in character such as the intervention in Iraq, were also seen in the latter part of the Cold War and after. These interventions, unlike those discussed in the humanitarian cluster later, are clearly seen as refugee averting strategies: “The United Nations’ safe havens that were established in the territorial

¹⁶⁶ UN General Assembly Resolution on *International Cooperation to Avert New Flows of Refugees*, adopted on 11 December 1980, A/RES/35/124

¹⁶⁷ UN General Assembly Resolution on *International Cooperation to Avert New Flows of Refugees*, adopted on 16 December 1981, A/RES/36/148

¹⁶⁸ UN General Assembly, *International Cooperation to Avert New Flows of Refugees Notes by Secretary General*, 13 May 1986, A/41/324

boundaries of Iraq to protect the Kurds from the Iraqi military and in the former Yugoslavia to shield Bosnian Muslims from Serbian and Croatian attack are...examples of the shifting trend toward containment policy...Evidence suggests that early implementation of these programs may be an effective preventive mechanism” (Tiso 1994: 575).

Some observers and scholars, including Tiso quoted in the paragraph above, believed that containment strategies were working by reducing refugee numbers in the years immediately after the Cold War. But others believed that the shifted focus on root causes was not delivering in terms of concrete results (Martin 1982). It did not reduce the number of people displaced and international cooperation to address it as a human rights and humanitarian concern was not getting any better. There were a few more strategies created by refugee receiving states through the 1980s and 1990s that pushed norms of sovereignty further than human rights or humanitarianism.

One of the first among these was an Australian initiative to push a wedge between refugees and long-term protection by emphasizing what they considered an existing practice of temporary refuge. The Executive Committee of UNHCR reaffirmed this practice with a caution to explore it deeper in 1980.¹⁶⁹ Its deeper exploration through a group of experts again cautiously concluded that asylum seekers should be provided with a solution on a durable basis in the country that they first seek refuge, and that only “if that State is unable to accord them asylum on a durable basis, it should at least grant them asylum on a temporary basis.”¹⁷⁰ The burden of granting asylum still remained with countries of first instance, and these states – especially in South East Asia – were feeling overburdened. Many

¹⁶⁹ UNHCR, Conclusions Adopted by the Executive Committee on International Refugee Protection, No. 19 (XXXI) Temporary Refuge (1980)

¹⁷⁰ UNHCR, Report of the Meeting of the Expert Group on Temporary Refuge in Situations of Large-Scale Influx, Geneva, 21-24 April 1981, EC/SCP/16, para. 40(i)

resettlement countries were also developing their own temporary refuge or temporary protection policies, such as Norway¹⁷¹, the US (Bertrand 1993), Australia (Phillips and Spinks 2013) and others.

Growing pressure from countries of first instance paved the way for the Comprehensive Plan of Action at a May 1988 meeting in Thailand that brought together first asylum governments, resettlement countries, and others involved with the refugee crisis, especially with the Vietnamese boatpeople (Bronée 1993). The Plan sought to stem clandestine departures, regulate orderly departure, guarantee temporary refuge for all asylum seekers, establish region-wide refugee status determination procedures, continue resettlement programmes, coordinate repatriation of failed asylum seekers.¹⁷² Though some considered the Comprehensive Plan as successful (Bronée 1993), others saw it as hostility towards asylum seekers (Helton 1989). Meanwhile the European states adopted the Dublin Convention in 1990 that came into effect in 1997, followed by the Directive on International Protection and the Dublin Regulation by the turn of the century. These were meant to regulate the movement of asylum seekers between European states that no longer had border control (Hurwitz 1999 and Battjes 2002), and close their doors on refugees (Kjaerum 1994).

Some policies even undermined accepted international understandings and normative practices. For instance, the practice of assigning 'safe country' tags meant that those granted asylum can return to a country that is no longer a threat, or return to the country of first asylum, or is not granted asylum because the country of origin has been pre-assessed as safe. This is legally aberrant to the very foundation of the Refugee Convention "that is

¹⁷¹ Documents: Temporary Protection, Summary and Recommendations from the Report of the Inter-Ministerial Working Group, Norway, April 1993, *International Journal of Refugee Law*, Vol.5 No.3, pp.477-490

¹⁷² UN General Assembly, *Report of the Secretary General on the International Conference on Indo-Chinese Refugees*, 22 September 1989, A/44/523

the individual definition of the refugee, which is the standard by which to judge the applicant's claim (Hailbronner 1993).

7.1.1.4. Cluster Conclusion: Rethinking Sovereignty As Responsibility in the Guiding Principles

Norms of sovereignty have remained steadfast in the face of emerging norms of protection and rights of the displaced. There has been a growing intensity to, and continued cascading of the norms of sovereignty in that the exercise of sovereignty is a state's prerogative. This can be seen especially in the practice of granting territorial admission to people. The strength of the norms of sovereignty is also evident in the rejection to formulating international laws on the right of asylum – fundamental to upholding the freedom of movement and thus other rights as discussed above. It is also manifest in the establishment of international policies, programmes and strategies that deterred even a humanitarian response to asylum seekers.

In fact, containment policies such as safe havens go against the fundamental right to freedom of movement. However, there was a normative double standard in the practice of sovereignty as well. While humane deterrence policies were in order to protect the sovereignty of receiving states, strategies that sought to avert refugee flows was interference in the sovereignty of countries of origin. For instance, the US-led operation in Iraq in 1991 to protect the fleeing Kurdish people was an incursion, however humanitarian, on Iraq's sovereignty. Of the long list of UN Security Council resolutions on Iraq following the invasion of Kuwait, only a handful did not fall under chapter VII of the UN Charter, and it was one of these resolutions that the intervening states claimed gave them legitimate grounds to interfere in an internal conflict.¹⁷³ But it did not explicitly do so, except on the grounds

¹⁷³ UN Security Council Resolution 688, adopted at its 2982nd meeting on 5 April 1991, S/RES/688 (1991)

that this resolution recalled previous resolutions adopted under Chapter VII though did not include any call to assist and protect the Kurdish people.

Containment policies were given an institutional allure with the possibility of calling upon UNHCR to respond in a humanitarian capacity on an ad-hoc basis. But not without a caveat as stated in the 1998 UNGA resolution that took note of the Principles: “Reaffirms its support for the role of the Office of the High Commissioner in providing humanitarian assistance and protection to internally displaced persons, on the basis of specific requests from the Secretary-General or the competent organs of the United Nations and with the consent of the State concerned, taking into account the complementarities of the mandates and expertise of other relevant organizations, and emphasizes that activities on behalf of internally displaced persons must not undermine the *institution of asylum*.”¹⁷⁴ So there may have been some institutional resistance to the undermining of the norms of asylum.

However, the various national policies are what lent structure and meaning to the norms of asylum, especially to those who were displaced and did not fit the Refugee Convention definition because of the lack of clear international normative practice on the matter, such as in the case of internally displaced or stateless persons. For instance, people displaced during the violent creation of the state of Bangladesh in 1971 did not fit the definition of a refugee. International norms of refuge and asylum were not available in this case leaving them to turn to Indian, Pakistani, and then emerging Bangladeshi governments (Ferris 1993: 8). Chinese refugees in Hong Kong faced a similar fate in 1959 when the UNHCR could do very little for them. In theory, they could avail of the protection of the Republic of China, seeing as they were still within Chinese territory (Plender 1994).

¹⁷⁴ UN General Assembly Resolution on the Report of the Third Committee on the Office of the United Nations High Commissioner for Refugees, adopted on 12 February 1999, A/RES/53/125

Therefore, though seldom to the benefit of asylum seekers and often to the strengthening of territorial integrity and state sovereignty, it was national policies that cascaded international norms on the freedom of movement and its related rights, within and beyond the Refugee Convention.¹⁷⁵

The push to draw out existing international norms applicable to situations of internal displacement, and highlight the rights of IDPs came amidst the developments discussed above. Shifting international focus from arriving asylum seekers to averting them also meant increasing attention to those displaced within borders. The resulting Guiding Principles on Internal Displacement was founded on the principle of sovereignty as responsibility, which is not a deviation from existing normative practice or understanding though it has been considered a norm-altering formulation¹⁷⁶.

Sovereignty – whether through protection of a state’s own or interference in another’s – has always been at the core of the displacement discourse, as has been revealed in the genealogy of this cluster. It would seem that the efforts to reframe sovereignty as “sovereignty as responsibility” was not entirely successful. This guiding philosophy of the norms on internal displacement only embedded and framed the issue deeper into the normative web of sovereignty.

Interestingly, an explicit responsibility of the state is only mentioned once in the Principles, with a mention of the state itself only five times two of which

¹⁷⁵ From a regional perspective, adoption of the *1928 Havana Convention on the Right of Asylum*, which was followed by the *1933 Montevideo Convention on Political Asylum*, seems to have caused more confusion with regards to the granting of refuge and granting of political asylum in the Latin American region. Meanwhile in Africa, the *1969 Convention Governing the Specific Aspects of Refugee Problems in Africa* seems to complement the *1951 Refugee Convention*. And a unified strategy by the EU seemed to have limited the options for asylum seekers.

¹⁷⁶ The authoritative book on internal displacement by Korn and Weiss claims that the concept of ‘sovereignty as responsibility’ “was a new way of thinking about an issue that was central to the problem of assistance and protection for the internally displaced.” Weiss, T.G. and Korn, D.A. (2006), *Internal Displacement: Conceptualization and its Consequences*, London and New York: Routledge, p.24

are made in the introduction and scope of the Principles, specifically the definition of an IDP. The explicit mention of state obligation is made in principle 9 in reference to the international “obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.” Other obligations or references to normative practice are linked to national, state or competent authorities, which is unclear in formulation and vague in indicating whose responsibility IDPs are. Based on “sovereignty as responsibility,” the Guiding Principles are non-interfering at best, but this may have left the question of the belonging and protection during and after displacement of IDPs unanswered.

7.1.2. Cluster 2: Humanitarianism – Walking the Human Rights Tight Rope

Cluster Timeframe: Late 19th century – Early 1990s

Internal displacement has been described as one of the most complex humanitarian crises. Examination of the Guiding Principles shows that it is not the short-term humanitarian concerns that pre-occupied the drafters. Only four principles in the fourth section – principles 24 to 27 – of the instrument relates to humanitarian assistance. They relate to customary international values – humanity, impartiality, neutrality – attached to the provision of humanitarian assistance, vesting the national authorities with the responsibility to provide humanitarian assistance in the first instance, protection of humanitarian workers, and giving due regard to the protection needs of IDPs when providing said assistance.¹⁷⁷

The core of the humanitarian dimension of the Guiding Principles lies in its provisions for humanitarian protection, though the scope and nature of

¹⁷⁷ Section IV – Principles Relating to Humanitarian Assistance (principles 24 to 27) of the *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2,

internal displacement as defined in the Principles extends beyond situations of armed conflict. It was the growing number of non-international armed conflicts and complex political emergencies that made the development of the Guiding Principles seem urgent. Humanitarian protection is the framework of international norms that consist of provisions for the protection and safety of combatants and civilians during times of war. Provisions of international humanitarian protection are more rights focused in that they aim to preserve the rights of those under its protection during times of war. The core of international humanitarian protection during times of war is deeply, but not exclusively, rooted in the Four Geneva Conventions and two Protocols appended to them. Furthermore, humanitarian protection extends to include situations that cannot definitively be categorized as war, nor qualify as peacetime either. These are humanitarian crises in which wartime provisions cannot and, may not suffice.

To explore and understand the nuances of humanitarianism embedded in the Guiding Principles genealogically, this cluster is analyzed, in the first instance, within the framework of wartime provisions protecting civilians in non-international armed conflict, and then to humanitarian protection norms that fall outside wartime provisions. At the end of the cluster we return to the Principles to re-assess its normative foundations in relation to humanitarian protection.

7.1.2.1. Protecting Civilians from Excesses of Violence

International humanitarian and human rights laws have protected civilians in armed conflicts in a systematic way at least since the institutionalization of the Laws of War governed by the 1907 Hague Regulations¹⁷⁸ that were

¹⁷⁸ *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, adopted on 18 October 1907

elaborated from the second Hague Convention of 1899¹⁷⁹. The Laws of War has been consistently developed on the premise that excessive violence and needless destruction are superfluous to actual military necessity, and are not only immoral but also counterproductive to the attainment of the objectives of the use of military force (Graham 1975).

The Laws of War may not have an explicit rights approach in its provisions to protect civilians, but by aiming to reduce unnecessary suffering, which was and continues to be understood as “excessive” or “needless,” citizens would be treated as humanely as would prisoners of war by the occupying forces (*jus in bello*). Article 3 of the Hague regulations makes this provision for both combatants and non-combatants that can be expected to constitute a belligerent army in an occupied territory. This provision notwithstanding, the preamble to the 1907 Hague Convention states that, “Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, *the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations*, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.”¹⁸⁰ A direct human rights-centered protection becomes part of the international normative framework of protection in the mid-twentieth century, which will be discussed in the latter part of this cluster.

7.1.2.1.1. An Analysis

¹⁷⁹ *Hague Convention (II) on the Laws and Customs on the War on Land*, adopted on 29 July 1899

¹⁸⁰ *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, adopted on 18 October 1907 (emphasis added). There is no definition of inhabitants in the Hague Regulations, except by qualification in the definition of belligerents. However the preamble to the Hague Convention is more clear in its provision of protection of both belligerents and inhabitants.

A quick view of actual practices suggests that the dictates of public conscience were not entirely in line with the normative discourse of the time. From 1899 to the 1907 version of the Laws of War on Land, state parties reduced by 13 members. At the time of publishing their book, Schindler and Toman (1988: 63) state that 17 members that “ratified the 1899 Convention did not ratify the 1907 version.” This however did not relieve them of their obligations under the 1899 Convention as stated in Article 4 of the 1907 Convention¹⁸¹, while those party to the 1907 version were bound by the updated Laws of War on Land.

State Acceptance of Norms in Numbers

The Normative Instrument	State Parties ¹⁸²
Hague Convention (II) on the Laws and Customs on the War on Land 1899	51
Hague Convention (IV) and annexed Regulations 1907	38 (+15 signed)

The 1907 Convention only makes a handful of clarificatory additions to the 1899 version (Schindler and Toman 1988), yet there were a few members who preferred the earlier one. And since both versions held respective state parties obliged to adhere, the reduction in numbers is not significant, in theory, to the cascading of norms regarding the protection of civilians from the excesses of war. However, these earlier international obligations do not extend to non-international armed conflicts or conflicts not of an international character, which means that civilians affected by internal armed conflicts, including IDPs though undefined at that time, were not explicitly protected in

¹⁸¹ Article 4 of the *1907 Hague Convention (IV)* states that “The Convention of 1899 remains in force as between the Powers that signed it, and which did not also ratify the present Convention.”

¹⁸² State party numbers are being cited from ICRC’s official data as available on their online archive: <https://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByDate.xsp>

any way by the Laws of War. Interestingly, this was a normative break from what prevailed before¹⁸³.

7.1.2.2. Non-international Armed Conflict Provisions: Normative Break

There was an earlier codification that established the rules for the protection of civilians in non-international conflicts. Interestingly, a year before the first Geneva Convention of 1864, the Lieber Code established the rules of war for the armies of the United States, which also included their treatment of wounded enemy combatants, prisoners of war, hostages, and rebels, insurgents and their governments, and most importantly armed and unarmed, and loyal and disloyal civilians both in the U.S. and in other countries where the war was being fought.

The Lieber Code contains a separate section – Section X containing articles 149 to 157 – that elaborated the rules of engagement in situations of insurrections, civil war and rebellion. The last but one article of the Code is significant here; it states:

“Common justice and plain expediency require that the military commander protect the manifestly *loyal citizens*, in revolted territories, against the hardships of the war as much as the common misfortune of all war admits.

The commander will throw the burden of the war, as much as lies within his power, on the disloyal citizens, of the revolted portion or province, subjecting them to a stricter police than the noncombatant enemies have to suffer in regular war; and if he deems it

¹⁸³ For studies on earliest conceptions of internal conflicts, see Laura, P. (2006) *Formation of the Treaty Law of Non-International Armed Conflicts*, Boston and Leiden: Martinus Nijhoff Publisher. Though not part of the timeframe of the humanitarian cluster, it is interesting to note that internal conflicts were considered almost sinful in the Christian traditions. Even the Arthashastra – the ancient Indian text on statecraft – considers “internal troubles” more damaging to the King and sovereign than external ones. For more, see *Kautilya’s Arthashastra*, translated into English by R. Shamasastri

appropriate, or if his government demands of him that every citizen shall, by an oath of allegiance, or by some other manifest act, declare his fidelity to the legitimate government, he may expel, transfer, imprison, or fine the revolted citizens who refuse to pledge themselves anew as citizens obedient to the law and loyal to the government.”¹⁸⁴

Though extremely limited and characterized by loyalty, the Lieber Code clearly protects citizens in a non-international armed conflict, which in the Code were characterized by the definitions of an insurrection, civil war and rebellion. All of these categories of combat had one commonality – territorial restriction as that reflected by a legitimate government.¹⁸⁵ In a reductionist sense, this is similar to the present understanding of an armed conflict of a non-international character that has since the 1949 Geneva Conventions been defined by conflicts that are limited to within a member state’s sovereign borders.¹⁸⁶

7.1.2.2.1. An Analysis

Though the Lieber Code was an American military policy, scholars such as Schindler and Toman (1988) see the Code as the foundation to modern international laws of war. It is also said to have “influenced the further codification of the laws of war and the adoption of similar regulations by other states” (Schindler and Toman 1988: 3). The normative understanding that prevailed in an influential instrument such as the Lieber Code, however narrow and nascent, seemed anathema to the evolving international system

¹⁸⁴ Article 156 of the *Instructions for the Government of Armies of the United States in the Field* promulgated as General Orders No.100 by President Lincoln (*Lieber Code*), on 24 April 1863 (emphasis added). Available online at the Yale Avalon Project: <http://avalon.law.yale.edu/ancient/hamframe.asp>

¹⁸⁵ Articles 149 to 152 of the *Lieber Code* define insurrection, civil war and rebellion respectively

¹⁸⁶ Article 3 common to the 1949 Geneva Conventions describes armed conflict not of an international character as only defined by its “occurring in the *territory* of one of the High Contracting Parties.” (emphasis added)

over the next several decades. This is despite the fact that there was an increasing recognition through the nineteenth century of the applicability of emerging international laws of war to internal strife such as insurgency, belligerency and civil war. One of the earliest such recognitions was in 1822 when “the Supreme Court of the United States referred to recognition by its government of a state of civil war between Spain and its colonies” (Cullen 2010: 14).

But until the mid-twentieth century, the protection of non-combatant civilians or loyal citizens that would also include those who may have been internally displaced became more problematic, and less clear than what was stated in the Code. Though the Lieber Code inspired much of the early international humanitarian framework, especially the Laws of War, its provisions on the treatment of civilians during civil war was not carried forward, and did not cascade.

7.1.2.3. 1949 Common Article 3: Patching Up the Normative Break

Efforts were made to patch up this normative break of the late nineteenth early twentieth centuries. In the drafting an entire convention on the protection of civilians, one article specifies their protection in armed conflicts not of an international character. This protection is specified in Article 3 common to the 1949 Geneva Conventions, in a limited form.

The limited nature and scope of Common Article 3, though “significant and innovative,” was the result of the reluctance of the member states of the international community to recognize, and thereby grant, equal status to armed forces rebelling against recognized governments (Elder 1979). The Diplomatic Conference of 1949 that finalized the Four Geneva Conventions at the end of the Second World War and in the dawn of decolonization echoed with deliberations on what started out as the fourth paragraph of Article 2 of the draft conventions. Article 2 common to the Geneva

Conventions dealt with the treatment of civilians in international conflict. After being rejected several times since the Diplomatic Conferences of 1912 on the matter of protection of civilians in non-international armed conflicts, the ICRC finally restricted the matter to the last paragraph of Article 2. This draft was presented at the 17th Red Cross Conference in Stockholm (Elder 1979).

However, the objections continued. “No other issue has given rise to such a long discussion and to such a detailed and exhaustive study as the question of the extension of the Convention to war victims of conflicts not of an international character.” Mr. Morosov part of the delegation of the former USSR was right in making this remark at the eighteenth plenary session of the 1949 Diplomatic Conference.¹⁸⁷ Member states dilly-dallied on the question of nature of armed conflicts not of an international character – should it be defined on formal or factual criteria, as The Chairman of the Special Committee appointed to decide on these difficulties asked at its third meeting.¹⁸⁸

But even before identifying the defining criteria of non-international armed conflicts, the debate seesawed on the very need for such a provision. Mr. Morosov of USSR at the same session argued that since the very reason for the establishment of the UN is upholding of international peace and repressing all acts of aggression to the contrary, and since the Conventions were based on principles of international law and amplified provisions of international law relative to the laws and customs of war, shouldn't “the special provisions of international law relative to periods of war should be extended to all cases of armed conflict, including those of a non-

¹⁸⁷ *Final Record of the Diplomatic Conference of Geneva of 1949*, Volume II Section B, p.325

¹⁸⁸ *Final Record of the Diplomatic Conference of Geneva of 1949*, Volume II Section B, p.44

international character.”¹⁸⁹ Others, including the ICRC held a diametrically opposing view, as stated the following day at the nineteenth plenary meeting: “I appeal to you most urgently to provide at least minimum protection for war victims even in conflicts not of an international nature,” said Mr. Carry of the ICRC.¹⁹⁰

The deliberations also reached a point of separating the fourth paragraph of Article 2 to form another Article – Article 2A and then Article 3. With a “timid breach” (Junod 1984: 30) in the normative understanding of sovereignty, the adoption of Common Article 3 in the Geneva Conventions was a victory in many ways, especially for the ICRC to whom all war victims should be eligible for equal international protection.

7.1.2.3.1. An Analysis

Part of the reason for this “timid breach” (Junod 1984: 30) can be revealed when situating the drafting of the Geneva Conventions, especially Common Article 3, within the post-World War II international context. Soon after the end of WWII, there was a wave of conflicts – inter and intra-state – that dotted the history of the longest superpower ideological standoff of the time – the Cold War¹⁹¹. Even as conflicts took place around the globe, those internally displaced were not the ones who posed a daunting challenge for the international community; it was those who fled across international borders. This issue and its impact on the normative development of internal displacement will be discussed at some length in the next cluster on

¹⁸⁹ *Final Record of the Diplomatic Conference of Geneva of 1949*, Volume II Section B, p.326

¹⁹⁰ *Final Record of the Diplomatic Conference of Geneva of 1949*, Volume II Section B, p.337

¹⁹¹ The Indochina War began in 1946, the Israeli-Palestinian partitioning of 1948 led to the unending conflict in the region, the conflict in Myanmar (then Burma) began the same year, the Korean War began a couple of years later, followed by the Laotian war in 1953, the Algerian war in 1954, the Vietnam War the year after, the Tibetan conflict towards the end of the 1950s, and a host of internal conflicts in the 1960s in South America. A few insurgencies, and a handful of liberation wars owing to decolonization add to this list, not to mention the spill over of the US-USSR standoff in countries like Afghanistan and Vietnam.

sovereignty. In many ways, the normative strands of international humanitarianism overlaps and interlinks with the other clusters and vice versa, which will be elaborated in the final overall analysis of all three clusters before moving to stage 3 of this case study.

Therefore in 1949, though small, a consensus to include Common Article 3 into the Geneva Conventions was a big leap in international norm cascading and shifting that brought all civilians under the purview of international humanitarian laws. The four Geneva Conventions have been ratified by all 196 states, which in numeric terms means that it has thoroughly cascaded.

State Acceptance of Norms in Numbers

The Normative Instrument	State Parties¹⁹²
Geneva Conventions (I, II, III, IV) 1949	196

But the quantitative lens of norm cascading does not always reflect a similar view in the application of a norm, as has been the case with the application of Common Article 3. There are often legal questions to the point at which an internal armed conflict begins to be recognized; but most often “its application has been discarded by certain governments that consider “events” occurring in their territories do not constitute real armed conflicts” (Junod 1984: 30) Or as in the Algerian or 1973 Chilean conflicts, Article 3 conditions were belatedly recognized. These legal and political challenges that were deliberated into a compromised Article 3 was what led to the need for the Additional Protocol II to the 1949 Geneva Conventions towards the 1960s and 1970s. Though the normative gap seemed to have been patched by Common Article 3, it seemed insufficient in reality to protecting civilians impacted by non-international armed conflicts.

¹⁹² State party numbers are being cited from ICRC’s official data as available on their online archive: <https://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByDate.xsp>

7.1.2.4. 1977 Additional Protocol II: Re-cascading or Regression?

Though the application of Common Article 3 of the 1949 Geneva Conventions proved problematic, it was nevertheless foundational to the drafting of the 1977 Additional Protocol II. The preamble of Protocol II sets the tone for this:

“The High Contracting Parties,
Recalling that the humanitarian principles enshrined in Article 3 common to the Geneva Conventions of 12 August 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character,
Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person,
Emphasizing the need to ensure a better protection for the victims of those armed conflicts,
Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience...”¹⁹³

In many ways, the second Additional Protocol to the Geneva Conventions was a re-cascading of existing normative understanding regarding the protection of civilians in non-international armed conflict. Try as it did, the ICRC could not expand the parameters of Common Article 3 in its many drafts and deliberations of Additional Protocol II in the decades ahead of the Four Diplomatic Conferences of 1974-1977. After many hours and years of deliberation on the nature and characteristics of non-international armed conflict and even a coalition of states that rejected the idea entirely, as in the 1949 Diplomatic Conference, Protocol II finally came to fruition. So, though Protocol II rests on the normative foundations of Common Article 3, it is its

¹⁹³ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts* (Protocol II), adopted on 8 June 1977, 1125 UNTS 609

own instrument additional to all four Geneva Conventions and not additional to Common Article 3. Junod's (1984: 32) account on this deserves elaboration here:

"A final goal was to safeguard what article 3 has already attained. To avoid a legal regression if a restrictive definition was adopted...Safeguarding the conditions of application of common article 3...demonstrates that Protocol II was conceived as an entity additional to the four Conventions, applicable to all armed conflicts other than those subjected to common article 2. This separation of the Protocol from article 3 was aimed at avoiding a reduction in the scope of article 3, which might result from establishing precise rules. Common article 3 thus kept its autonomous existence."

The drafting and adoption of Additional Protocol II was an exercise in restating the importance of existing international humanitarian norms, replicating them to a large extent within provisions of Protocol II, and particularizing them by extending the existing understanding to include situations of non-international armed conflicts. Though it is primarily a re-cascading period, it was not without compromises and regressions.

One of the first compromises was that Protocol II has only 168 parties, and the rest are still legally bound by the Geneva Conventions including those who are party to Protocol II. It projects diminished power and legitimacy in its own right, though they replicate existing normative understandings.

A second compromise was clarity and specificity, which are the core elements of the component of meaning in norm cascading. From the draft 47 provisions that were detailed and comprehensive, the Protocol II adopted was a reduced 28 provisions that were generic. Thirdly, it also provided for limited agency compared to Common Article 3 that referred to "parties to the

conflict” ensuring conformity to the Geneva Conventions through some form of a special agreement in the last paragraph of the article. Protocol II makes no such reference.

The limited nature and scope of Protocol II was the negotiated success of the Pakistan delegation at the 1977 Diplomatic Conference (Junod 1984). Mr. Hussain of the Pakistan delegation speaking at the 49th plenary meeting of the fourth and last session of the Diplomatic Conference presented the thinking behind the compromised and compressed Protocol II having produced a reduced draft:

“Its provisions must be acceptable to all and, therefore, of obvious practical benefit; the provisions must be within the perceived capacity of those involved to apply them and, therefore, precise and simple; they should not appear to affect the sovereignty of any State Party or the responsibility of its Government to maintain law and order and defend national unity, nor be able to be invoked to justify any outside intervention; nothing in the Protocol should suggest that dissidents must be treated legally other than as rebels; and, lastly, there should be no automatic repetition of the more comprehensive provisions, such as those on civil defence, found in Protocol I. To include such provisions would risk changing the material field of application to such an extent that States would either fail to ratify Protocol II or tend to argue for its non-application in situations falling within its scope, thereby leaving the victims of those conflicts without adequate protection.”¹⁹⁴

7.1.2.4.1. An Analysis

From a holistic point of view, the development of Protocol II seemed to be marked by a cascading stasis, almost a step back, because of its limited

¹⁹⁴ Summary Records of the Plenary Meeting Volume VII (Fourth Session CDDH/SR. 47-59) of the *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable to Armed Conflict 1974-1977*, p.61

scope and nature though it replicated and particularized the normative essence of then existing international humanitarian laws. Though the international community of states accepted the replication and particularization of normative essence of the existed intersubjective framework, they were reluctant to frame the elements or nuances of the replicated norms any further.

State Acceptance of Norms in Numbers

The Normative Instrument	State Parties ¹⁹⁵
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)	168 (+3 signed)

Nevertheless, Protocol II together with Common Article 3 provided far better international legal provisions for the protection of civilians, including IDPs, in non-international armed conflicts.

However, the realities of international humanitarianism on the ground through the 1960s and 1970s were a testament to this norm cascading stasis and regression. States were taking a step back, and letting non-governmental organizations (NGOs), including the ICRC, to take their place, giving rise to a new humanitarianism. Chandler notes that in the bipolar world, relief charities stepped in where states could not because their humanitarianism seemed universal and politically neutral (Chandler 2001). Between 1945 and 1949 alone nearly 200 NGOs were created, most of them based in the US (Davey, Borton and Foley 2013). In situations such as in Biafra in 1968 and in the 1970s in Ethiopia, Bangladesh and Cambodia, NGOs closed the gap of humanitarian need that states left wide open, or simply refused to get involved in. At times, the NGOs themselves became

¹⁹⁵ State party numbers are being cited from ICRC's official data as available on their online archive: <https://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByDate.xsp>

part of the casualties despite their political neutrality and universalism, such as the ICRC in the Biafran conflict.

Biafra was a civil conflict made more complex with the UN deciding non-involvement, the Nigerian government blocking Biafra's secession, and a famine. Though the Nigerian government denied permission to the ICRC to provide relief services¹⁹⁶, the ICRC started airlifting relief in late 1968. This bold move made the ICRC a prime target when the Nigerian government shot down the Red Cross plane in the summer of 1969 (Desgrandchamps 2012). In Biafra the old humanitarianism was also shot down, and a new humanitarianism emerged according to many.¹⁹⁷ The new humanitarianism was further catalyzed by the crises of East Pakistan and, later, Ethiopia. The mass displacement and fatalities in East Pakistan in the early 1970s, later renamed Bangladesh, caused by political violence, armed uprisings and natural disaster challenged the humanitarian system. The Ethiopian famine of 1984-85 also revealed areas in the international humanitarian structure that needed improvement (Davey, Borton and Foley 2013).

By the 1970s and 1980s, governments became part of the new humanitarianism by becoming direct funders – the donors – “as well as the integration of international humanitarian NGOs in international institutions and their growth in numbers and influence” (Chandler 2001: 686). Therefore the bipolar Cold War world was fertile not only for humanitarian action (Davey, Borton and Foley 2013), but also for a deeper, indirectly interventionist, political humanitarianism with strong human rights undercurrents.

¹⁹⁶ BBC, 1969: Nigeria Bans Red Cross Aid to Biafra, available online: http://news.bbc.co.uk/onthistday/hi/dates/stories/june/30/newsid_3733000/3733321.stm

¹⁹⁷ Barnett, M. (2011) *Empire of Humanity: A History of Humanitarianism*, Ithaca, New York: Cornell University Press; Macalister-Smith, P. (1985) *International Humanitarian Assistance: Disaster Relief Actions in International Law and Organization*, Leiden and Boston: Nijhoff; Desgrandchamps, ML. (2012) 'Organising the Unpredictable': The Nigeria–Biafra War and Its Impact on the ICRC, *International Review of the Red Cross*, Vol.94 No.888, pp.1409-1432

7.1.2.5. *In the Crosshairs of Humanitarianism and Human Rights*

The normative roots of the international human rights undercurrents is deeply embedded in one of the most fundamental global body of norms – the UN Charter. This is not to say that international human rights did not exist before 1945, but that the Charter initiated their internationalization and institutionalization at a collective level like nothing before it (Buergenthal 1997). The Charter also underpins the norms of sovereignty and non-intervention in domestic affairs – almost pitted directly against human rights norms, which has been discussed in the sovereignty cluster above.

The tension between the emerging norms of human rights and the deeply rooted norms of sovereignty also led to shifts in the perspective of humanitarianism as well, drawing the two normative strands of human rights and humanitarianism closer. This came about at the UN's first International Conference on Human Rights in Tehran in 1968 that marked 20 years of the Universal Declaration of Human Rights. A resolution at the conference stated that the UN Secretary General could take steps to uphold human rights in armed conflicts. These steps included promoting the better application of international humanitarian laws, carrying out an assessment of a need for additional humanitarian instruments, and encouraging the continued observance of the laws of civilized nations drawn from the laws of humanity and dictates of public conscience, pending the adoption of new laws.¹⁹⁸ This was further endorsed by a UN General Assembly resolution on the same issue in the same year.¹⁹⁹

The growing focus on human rights was also reflected in the increasing need for development and growth. Some of these demands were being met

¹⁹⁸ Resolution XXIII Human Rights in Armed Conflicts, *Final Act of the International Conference on Human Rights*, Tehran 22 April – 13 May, 1968, A/CONF.32/41, p.18

¹⁹⁹ UNGA Resolution on Respect for Human Rights in Armed Conflicts, 2444 (XXIII) adopted on 19 December 1968

through humanitarian NGOs. For instance, by the end of the 1960s Oxfam was spending “less than 10% of its budget on disaster response: more than 50% was used on medical and welfare projects in areas unaffected by any emergency, and 40% went on agricultural development and technical training” (Whitaker 1983: 22). Even agencies within the UN underwent transformations. UNICEF that rose from the demise of the UNRRA decided to extend its work during the period of the Cold War and the growing development debate to the general health of children who were not in any kind of emergency (UNICEF 1996 and others).²⁰⁰

This leads to a further shift in humanitarianism, which was not only marked by a deepening practice as described above, and in the previous section, but also by establishing a link between relief and development, and its subsequent securitization following the end of the Cold War. There are two arguments that enabled the linking of relief to development: first is that short-term assistance was insufficient and forward-looking strategies were needed, which led to the second strand that assistance should be rights based (Chandler 2001). Not only did NGOs play a bigger role in human rights-based humanitarianism that often spilled into development, but the international community also stepped up, at times, in the 1980s and 1990s taking bolder steps – humanitarian intervention – under chapter VII of the UN Charter to deal with human rights violations, such as in Iraq, Somalia, former Yugoslavia, Haiti and others (Buergethal 1997).

7.1.2.5.1. An Analysis

The coming together of humanitarianism and human rights has strengthened the protection of civilians, including IDPs, in various internal crises. A rights-based focus is also evident in the provisions of Protocol II that has replicated much of the fundamental rights guaranteed in the

²⁰⁰ UNICEF, *State of the World's Children 1996*, 50th Anniversary Edition; Davey, E., Borton, J. and Foley, M. (2013) *A History of the Humanitarian System: Western Origins and Foundations*, *HPG Working Paper Series*, p.27

ICCPR. The benefits of the meshing of humanitarianism and human rights exceed the complexities that arise from it. As Junod (1984: 34) notes, “the existence of an “overlapping zone” of situations in which international humanitarian law and human rights are applicable simultaneously contributes to the reinforcement of protection because the means of implementation of the Protocol and Covenant are different.”

State Acceptance of Norms in Numbers

The Normative Instrument	State Parties
1948 Universal Declaration of Human Rights adopted by UNGA resolution	48 in favour + 8 abstentions ²⁰¹
Proclamation of Tehran 1968 adopted at the International Conference on Human Rights	84 states present + delegates of UN bodies, specialized agencies, NGOs and others ²⁰²
International Covenant of Civil and Political Rights 1966	168 ²⁰³
International Covenant of Economic, Social and Cultural Rights 1966	164 ²⁰⁴
Turku Abo Declaration on Minimum Humanitarian Standards 1990	17 experts ²⁰⁵

²⁰¹ Office of High Commissioner for Human Rights, Factsheet No.2 (Rev.1) on the International Bill Human Rights, available online:

<http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

²⁰² UNFPA report on the Tehran Conference, available online at: <http://www.unfpa.org/events/international-conference-human-rights>, accessed on 11 March 2016

²⁰³ Data collated from the UN Treaty Series database

²⁰⁴ Data collated from the UN Treaty Series database

²⁰⁵ Data collated from the list of participants annexed to the Declaration. Available online: http://web.abo.fi/institut/imr/publications/publications_online_text.htm, accessed on 11 March 2016

Therefore the humanitarian protection provided through Protocol II, though limited in scope, was better because of the threads of human rights woven into it. One of the most important protections that not only replicates one provision of the Civilian Convention of 1949, but also extends it further is that which is provided in Article 17 – prohibition of forced movement of civilians. This was limited to protected persons or aliens²⁰⁶ as described in the first part of the 1949 Civilian Convention. In Protocol II this extends to all civilians and draws strength from the right to freedom of movement stipulated in the ICCPR²⁰⁷. Some of these and other aspects of rights have been discussed in the sovereignty cluster, and will be come up in the cluster on citizenship, as reinforcing and, at times, conflicting, yet coexisting norms.

However, there were some, including Theodore Meron (1983), who felt that protection gaps persisted in domestic situations of conflict and violence. This led to the drafting of the Turku Declaration of Minimum Humanitarian Standards for any situation that fell outside the purview of Protocol II or the within the derogation clauses of the human rights covenants (Petrasek 1998). Though not binding in any way, the Turku Declaration sets out 18 human rights provisions, including a right not to be displaced arbitrarily, to all situations including internal violence, disturbances, tensions, and public emergency, without any conditions for derogation.²⁰⁸

Fundamental standards of humanitarianism and humanity have been deliberated at the UN for decades without much progress. But by the end of the 1990s, several international legal milestones were achieved through

²⁰⁶ Article 4 of the General Provisions of the *1949 Convention (IV) Relative to the Protection of Civilian Persons in Time of War* states that “Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which *they are not nationals*.” (emphasis in footnote added)

²⁰⁷ Article 12 of 1966 *International Covenant on Civil and Political Rights*

²⁰⁸ *Declaration on Minimum Humanitarian Standards*, adopted by an expert meeting at the Institute of Human Rights, Abo Akademi University, Turku/Abo, Finland, 30 November – 2 December, 1990

case law of the many ad hoc international tribunals and the Rome Statute of the ICC that criminalized humanitarian and human rights violations, specifically war crimes, genocide and crimes against humanity, thereby strengthening international humanitarian and human rights laws (Schüller 2010).

7.1.2.6. Cluster Conclusion: Rethinking Humanitarian Protection in the Guiding Principles

It is clear from the genealogical exploration presented above that the humanitarian protection of civilians in internal armed conflicts has shifted, regressed and progressed since the late 1800s. Even the concept and idea of humanitarian protection has collided, conflicted and, at times, co-opted into normative frameworks on sovereignty, citizenship and human rights. From the Leiber Code to the laws of international humanitarianism, it is no longer just the protection of a person from the excesses of war, but also an extended embodiment of a person's rights.

Yet, deliberations on the human rights of the internally displaced – 1980s and 1990s – still concluded that IDPs were not sufficiently, and specifically, protected (Cohen 1991).²⁰⁹ Though a compilation of existing international laws and standards, as the Principles are often described, the Principles still expand international humanitarian normative foundations in two ways: identifying the issue, and framing acceptable behaviour.

The issue was identified in the definition of IDPs, which is a normative leap, as nothing before the Guiding Principles had done this. This is an accepted fact (Weiss and Korn 2006), but the emergence of a definition is not a normative breakthrough in itself; it is how the definition breaks normative

²⁰⁹ Also see Refugee Policy Group (1992) *Human Rights and Humanitarian Emergencies: New Role for U.N. Human Rights Bodies*: Washington DC: RPG; Cohen, R. and Cuénod, J. (1995) *Improving Institutional Arrangements for the Internally Displaced*: Washington DC: Brookings Institute and RPG

boundaries and created important precedents. The challenge – conflict-induced internal displacement – that plagued the international community was not the only focus of the definition. It included “armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters.”²¹⁰ Thus unlike Additional Protocol II to the 1949 Geneva Conventions, the Guiding Principles could be applied to situations of internal violence or war-like conditions that could be characteristic of any of the situations listed in the definition. It creates an explicit normative continuum between humanitarianism and human rights. It lays out a more malleable and flexible normative parameter than the international humanitarian framework with regard to scope and field of application.

Interestingly, through the identification of the issue was humanitarian in nature, the framing of the solution was not. The Guiding Principles do not draw from the protection granted through the Geneva Conventions and Additional Protocol II. The tabular analysis of the Guiding Principles in chapter 6 shows that out of 30 principles, only a handful are directly drawn or indirectly borrowed from the Geneva Conventions or Protocol II. Most principles are drawn from international human rights covenants and the Turku humanitarian standards, as indicated in Deng’s *Compilation and Analysis* and many of the draft Principles.

Two factors can explain this. Firstly the Guiding Principles were meant to address the gaps in the protection of the rights of IDPs. Secondly the restricted scope of application of the Geneva framework and its watered down provisions applicable in non-international armed conflicts, as discussed above, do not make it an appealing or natural choice.

However, this creates two problems: Firstly, as the framing of the humanitarian response to internal displacement is human rights centric, a

²¹⁰ *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2

humanitarian response is still limited. Moreover, having extracted the IDP category from the broad category of citizens who come under international humanitarian protection in non-international conflicts – Common Article 3 and Protocol II additional to the 1949 Geneva Conventions – the internally displaced may be put in a more complex crisis than before because of their special normative status. This was one of the concerns raised in consultations with Francis Deng and state government soon after his appointment, as stated in a post-consultations memorandum: “Those consulted expressed...fear that creating a new category of persons entitled to certain rights and/or treatment may give rise to *undesirable distinctions* among victims.”²¹¹ These fears were not unwarranted as was realized when states began internalizing some of the principles. In so doing, some states started processes of status determination in addition to registering IDPs, as stated in a 2008 Brookings Manual on protecting IDPs, thereby making the situation more complex (Williams 2008: 14).

The human rights approach has also been questioned by the ICRC because of the fact “that human rights law, even though formally applicable in wartime, is essentially designed for times of peace. In practice, the exercise of these rights in very often reduced in the event of conflict...” (ICRC 1988: 4) This is especially true in cases of internal violence that does not necessarily amount to a conflict, for which reason the Turku Standards were drafted. But as a non-legal, thus legally non-obligatory, set of norms, its provisions may or may not be observed. However, the ICRC’s statute gives it more legal force in the actions it can take in such instances (ICRC 1988).

Another problem goes back to ICRC and Switzerland’s initial concern that a new set of norms on IDPs would undermine the power and authority of

²¹¹ Memorandum Concerning Issues Raised During Consultations Held By The Representative on Internally Displaced Persons in Geneva, September 1992, from the unarchived collection of the Brookings Institute (emphasis added).

Additional Protocol II.²¹² Though a general hierarchy is created in the scope and introduction of the Principles, it does so without specifically calling on the Geneva Conventions or other existing humanitarian standards and practices. Not borrowing from Additional Protocol II or Common Article 3 more concretely in the Principles has, perhaps, eroded some of the power and legitimacy of those norms, in the case of IDPs at least, and highlighted its limitations and inadequacies once more. This is due to the identification of IDPs that are not limited to situations of armed conflicts, thus falling outside the purview of humanitarian laws. This is also due to the strategic approach of the drafters of the Principles that circumnavigated the thorny normative issue of sovereignty by reconstructing it as a responsibility of the state, but with no success as the sovereignty cluster revealed.

7.1.3. Cluster 3 – Citizenship: Flattened and Renationalized

Timeframe: 1900 to 1995

This leads to the third cluster – citizenship – of this study, which not only focuses on the post-displacement phase as is addressed in the last section of the Principles, but also on displacement itself as it relates to belonging. It is a question of belonging and re-belonging or emplacement. The question of belonging is also one layer in the clusters of sovereignty and humanitarianism, in that territorial borders demarcate the lines of responsibility also on the basis that those displaced belong, or ideally choose to belong to a particularly defined and internationally recognized space. This belonging, normatively and characteristically rich and complex, is derived formally through nationality and citizenship.

²¹² Confidential memo from Roberta Cohen to Francis Deng, Robert Goldman, Daniel Helle, Walter Kalin, Manfred Nowak and Maria Stavropoulou on *Next Steps in the Legal Process*, dated 20 June 1996, from the unarchived collection of the Brookings Institute.

Nationality and citizenship, often used synonymously and interchangeably,²¹³ according to Paul Weis, a authority on issues of nationality, “emphasize two different aspects of the same notion: state membership. “Nationality” stresses the international, “citizenship” the national, municipal aspect” (Weis 1956: 4-5).

Some, like Rubenstein and Adler (2000), try to highlight the distinction between the two. Others, like Chatterjee clarify the link between these deeply contested constructs: “The modern form of the nation is both universal and particular. The universal dimension is represented, first, by the idea of the people as the original locus of sovereignty in the modern state, and second, by the idea of all humans as bearers of rights...By enshrining the specific rights of *citizens* in a state constituted by a particular people, namely a nation. Thus, the nation-state became the particular, and normal, form of the modern state” (Chatterjee 2004: 29). Separating them, as far as possible, the following sub-sections explore these normative constructs of belonging that essentialize forced displacement.

7.1.3.1. Nationality: Situating Peoples

Nationality continues as a bastion of sovereignty, especially from an international perspective, in that it is the discretion of the state to decide who it allows in its territory, at least to the extent that was decreed in 1923 on nationality issues of Tunis and Morocco by the Permanent Court of Justice on the extent of domestic jurisdiction of states, in this case of Britain and France: “it might well be said that the jurisdiction of a State is exclusive within the limits fixed by international law – using this expression in its wider sense, that is to say, embracing both customary law and general as well as

²¹³ For discussions on the synonymous use of nationality and citizenship, see: Cohen, J. L. (1999) Changing Paradigms of Citizenship and the Exclusiveness of Demos, *International Sociology*, Vol.14 No.3, pp.245-268; Spiro, P.J. (2011) A New International Law of Citizenship, *The American Journal of International Law*, Vol.105 No.4, pp. 694-746; Weis, P. (1956) *Nationality and Statelessness in International Law*, London: Steven and Sons Ltd., p.4; and others

particular treaty law...The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain.”²¹⁴

This reserved domain was emphasized seven years later in the first attempt to codify international laws. In fact international laws on nationality were one of three items listed for international codification, the other two being territorial waters and state sovereignty (Reeves 1930). Though a highly political issue, the reason for nationality making the list of the first attempts to codify international law has often been attributed to the increased mobility of people by a US delegate on the nationality committee of the Hague Conference: “A century ago international law was regarded as having little or nothing to do with nationality, but as movements of populations from country to country and acquisition of new nationalities through naturalization have greatly increased in modern times, problems concerning the nationality of persons, involving conflicting claims between states, have correspondingly increased” (Flournoy 1930: 467).²¹⁵

Though the movement of people between territorial borders became, and continues as, an established way of existence, the right of people to belong – nationality – was not entirely a matter of individual choice as article 1 of the 1930 Hague Convention states, which also touches upon the tension between sovereignty and international law: “It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions,

²¹⁴ Permanent Court of International Justice (1923) *Advisory Opinion Series B No.4, Nationality Decrees Issued in Tunis and Morocco* on 7 February 1923

²¹⁵ The author of the article from which the citation is made and the US delegate on the Nationality Committee are the same person.

international custom, and the principles of law generally recognised with regard to nationality."²¹⁶

By the end of the Second World War, nationality was no longer only a prerogative of a state, but also an individual human right, as provided by article 15 of the UDHR. But, the legislation of rights through the drafting of the international covenants did not see the right to nationality translate in its totality to a legal right. Article 24 of the ICCPR only provides for a child's right to nationality.

Other specific legal provisions include prohibition of discrimination based on nationality as laid out in the 1965 Convention on the Elimination of All Forms of Racial Discrimination.²¹⁷ This fear of persecution based on nationality is also laid out in the 1951 Refugee Convention. Progressive steps included granting married woman the right to choose her nationality, and also giving women an equal right to decide her nationality in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²¹⁸.

7.1.3.1.1. An Analysis

Stemming from the recognition of the increased movement of people, the initial codification of international laws on the difficult topic of nationality primarily focuses on issues that caused complications between states such as questions of nationality of married women, children and so on. The objective was to simplify any points of law that would make relations between states easier. From the aspect of an individual's rights, it came

²¹⁶ Article 1 of the *Convention on Certain Questions Relating to the Conflict of Nationality Laws*, adopted on 13 April 1930 by the League of Nations, Treaty Series, vol. 179, p. 89 (emphasis added)

²¹⁷ Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted by the UN General Assembly on 21 December 1965, UNTS Vol. 660, p. 195

²¹⁸ Article 9 of the *Convention on the Elimination of All Forms of Discrimination Against Women*, adopted by the UN General Assembly on 18 December 1979, UNTS Vol. 1249, p. 13

down to which state would be responsible for them even in the case of expatriation and multiple nationalities.

State Acceptance of Norms in Numbers

The Normative Instrument	State Parties
1930 Convention on Certain Questions Relating to the Conflict of Nationality Laws (adopted by the League of Nations)	24 (11 of which signed and ratified the treaty after the establishment of the UN) ²¹⁹
1930 Protocol relating to Military Obligations in Certain Cases of Double Nationality (adopted by the League of Nations)	27 (14 of which signed and ratified the treaty after the establishment of the UN)

In the post-Second World War period, norms of lesser interference in domestic affairs prevailed as is evident in the crystallization of human rights laws in the ICCPR, which limits the right to nationality only to children. Deliberations above on the tension between limiting and extending international interference in domestic affairs are also relevant in this cluster.

However, spurred by the events in apartheid South Africa the community of states were able to come to a consensus about elimination of racial discrimination based on a list of criteria, including nationality, which also extended to the rights of women. This is more a reflection of the then growing need for individual equality rooted in the post-World War II emerging significance of human rights than a reflection of any diminishing importance of interference in internal state affairs or sovereignty. These were particularizations of the international norms of nationality within the

²¹⁹ Data collated from the UN Treaty Series database

broader normative framework of equality. Nationality matters remain within the domestic realm until they conflict with international law (Batchelor 1995), which meant that matters relating to internal displacement were left out of the questions on nationality.

7.1.3.2. *Situating the Stateless*

The realm in which tensions sparked and conflicted in the international domain was with regards to statelessness. Deliberations on statelessness shadowed international debates on nationality even in 1930 at the international community's first attempt to codify international laws. But the matter was not accorded sufficient significance, until the end of the Second World War and especially in relation to the granting of refugee status and asylum. Even then, it was a subject that was still secondary to that of determining the status of, and protecting refugees. As discussed for the previous clusters, though concerns and legal provisions for the protection of refugees was ontologically centered in the international, it evolved and cascaded in state practice at the domestic level. So too it was in the case of the normative project of statelessness.

In theory, mechanisms, thus far explored, that lead to statelessness are limited, but go beyond just the remit of the law. *De jure* (by law) statelessness are “those who are not considered as nationals by any state under its law” (Goris, Harrington and Köhn 2009: 4)²²⁰. But statelessness cannot only be characterised within law. *De facto* statelessness should also be taken into consideration. These are people who are “stateless in practice, if not in law – or cannot rely on the state of which they are citizens for protection” (Goris, Harrington and Köhn 2009: 4), such as the aboriginals of Australia, or Tamils of Sri Lanka, bedouins of Kuwait and so on. Though the first is an emphasis on citizenship itself, the latter is a shift to the protection

²²⁰ For more on the mechanisms of statelessness, see: Weissbrodt, D. and Collins, C. (2006) The Human Rights of Stateless Persons, *Human Rights Quarterly*, Vol.28 No.1, pp.245-276

of the citizen. This is directly linked to the conceptualization of citizenship itself, which is a political, social, economic and above all national normative project (Rubenstein and Adler 2000). Some have tried to “denationalize” (Bosniak 2000) citizenship, only to conclude that it is aspirational and a working possibility at best.

Citizenship is a concept and practice that has been around since the ancient city-states of Greece and Rome (Heater 2004) that was revived with the French Revolution (Tilly 1995),²²¹ the emergence and growing of the international human rights regime and much scholarly verbiage²²² since. But a couple of the more accepted theoretical and practical paths to citizenship are *jus soli* (right of birth) and *jus sanguinis* (right of blood), though these do not sufficiently cover claims to citizenship. *Jus domicili* (right by residence) should also be taken into consideration (Gibney 2009).

The debate on what constitutes right by residence is ongoing. However the debate offers some points to consider. One way to understand or assess right by residence is when a person chooses to exercise this right; i.e. a person makes a “choice” (Gibney 2009) to live or not in a particular state. Another way to look at *jus domicili* would be from the point of view of the

²²¹ Also see Heater, D.B. (2004) *A Brief History of Citizenship*, New York: New York University Press, pp.79-87; Yuval-Davis, N. (1999) The Multi-Layered Citizen, *International Feminist Journal of Politics*, Vol.1 No.1, pp.119-136; and others

²²² For some of the theories and debates on citizenship, see: Marshall, T.H. (1950) *Citizenship and Social Class*, Cambridge: Cambridge University Press; Anderson, B. (1983, 2006) *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London, New York: Verso; Hall, S. and Held, D. (1989) Citizens and Citizenship, in Stuart Hall and Martin Jacques (eds.) *New Times*, London: Lawrence & Wishart; Kratochwil, F. (1994) Citizenship: On the Border of Order, *Alternatives*, Vol.19 No.4, pp.485-506; Nussbaum, M., and Cohen, J. (1996) *For Love of Country? In a New Democracy Forum on the Limits of Patriotism*, Boston: Beacon Press; Kymlicka, W. and Norman, W. (1994) Return of the Citizen: A Survey of Recent Work on Citizenship Theory, *Ethics*, Vol.104 No.2, pp.352-381; Soysal, Y.N. (1997) Changing Parameters of Citizenship and Claims-Making: Organized Islam in European Public Spheres, *Theory and Society*, Vol.26 No.4, pp.509-527; Yuval-Davis, N. (1999) The Multi-Layered Citizen, *International Feminist Journal of Politics*, Vol.1 No.1, pp.119-136; Rubenstein, K., and Adler, D. (2000) International Citizenship: The Future of Nationality in a Globalized World, *Indiana Journal of Global Legal Studies*, Vol.7 No.2, pp.519-548; and others

state. “All people living under – or subject to – the laws of a particular state should be members of that state” (Gibney 2009: 51). A third way would be that of “societal membership” (Bauböck 2005). The test of membership is the depth of one’s social and economic roots into a particular political community, tying an individual’s well-being to the common good (Bauböck 2005).

7.1.3.3. *The Question of Habitual Residence*

However conceptualizations, characterizations and legal provisions on nationality, citizenship and statelessness do not always address, or provide responses to situations of forced displacement, especially internal displacement. Though territoriality stands out in this cluster, it comes down to one important question – that of habitual residence which can be seen in most of the international instruments pertaining to displacement, such as in the definition of refugees in the 1951 Refugee Convention,²²³ in the definition of IDPs in the Guiding Principles,²²⁴ and so too in one of the provisions in the 1954 Statelessness Convention.²²⁵

Scholars such as Cavers place the emergence of the use of ‘habitual residence’ in international legal discourse in the post-World War II Hague Conference that discredited the use of the connecting nationality factor at the individual level because of the denunciation of the pre-war Hague conventions that employed it (Cavers 1972).²²⁶ In fact, the emergence and employment of the term habitual residence began in international private

²²³ UN General Assembly, *Convention Relating to the Status of Refugees*, adopted on 28 July 1951, UNTS, Vol. 189 p. 137. Article 1 a(2) of the Convention uses the term habitual residence to identify those without nationality and may qualify as refugees.

²²⁴ Paragraph 2 of the introduction to the *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, identifies IDPs territorially as those “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence...”

²²⁵ Article 14 of the *Convention Relating to the Status of Stateless Persons*, adopted on 28 September 1954, UNTS, Vol. 360 p. 117

²²⁶ Carvers also cites Ernst Rabel’s (1958) work from the *Conflicts of Laws: A Comparative Study* in which Rabel states that the then Secretary General reported the need for a more satisfactory concept than nationality.

law, and very specifically in conventions relating to that of children – relating to their guardianship, adoption, abduction and so on (Cavers 1972 and Bozin-Odhiambo 2012). Thus, it may seem odd that in 1966 the covenant of rights and many more international conventions on the rights and protection of a child returned to the use of nationality – a concept with discredited claims since the end of the Second World War – as a connecting factor. However, habitual residence remains a determining criterion in establishing the nationality factor between individual and polity (Costamagna 2013).

This draws from the principle practice set forth by the judgment of the International Court of Justice in the contentious *Nottebohm* case in which the 11 out of 14 judges “have given their preference to the real and *effective nationality*, that which accorded with the facts that based on stronger factual ties between the person and one of these States whose nationality is involved. Different factors are taken into consideration, and their importance will vary from one case to the next: there is the *habitual residence* of the individual concerned but also the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc.”²²⁷ Though this was a principle approach in the case of dual nationalities, the ICJ was creating precedent by imposing this principle in the case of Friedrich Nottenbohm who had only one nationality – that of Liechtenstein. As Jones (1956: 288) explains, the court was extending the effective nationality principle “to the sphere of protection the principle of connection.”

Though habitual residence has legal precedence and significance, the concept is not legally defined. It has been argued that it be kept simple and out of the realm of spurious legal propositions leaving it open to

²²⁷ International Court of Justice, Reports of Judgments, Advisory Opinions and Orders, *Nottenbohm Case* (Liechtenstein vs. Guatemala) Second Phase, Judgment of 6 April 1955, p.22

determinations on the facts of a case.²²⁸ This allows conceptual and practical flexibility, and also frees this international and domestic term to be free from being bound by varying interpretations of national laws. However, this also means makes the application of habitual residence not as simple as not defining it, simply because facts – used to determine habitual residence – are not simple or uncomplicated (Stone 2000).

7.1.3.4. An Analysis

The post-Second World War period saw a dramatic rise in people who were left stateless and the response of the international community was the 1951 UN Refugee Convention. While drafting the Refugee Convention, the Ad Hoc Committee vested with this responsibility, had also drafted a Protocol relating to the Status of Stateless Persons. However, this Protocol did not see the light of day. At the Conference of Plenipotentiaries in 1951, it was decided that the Refugee Convention would be adopted without the Protocol relating to the Status of Stateless Persons (Batchelor 2005).

This not only led to the conceptual and practical separation of refugee and stateless vis-à-vis definition and effective protection (Batchelor 1995), but also created a deeper problematic – that of the exclusion of those displaced, especially internally displaced. A footnote in the 1949 *Study of Statelessness* is clarifying in this regard: “those refugees who have fled from one to another part of the country of which they are citizens are not stateless persons.”²²⁹ Though it would seem logical to categorize IDPs under the

²²⁸ For discussions on this, see: Clive E. (1997) The Concept of Habitual Residence, *The Juridical Review* (part 3) pp.137-147; Cavers, D.F. (1972) Habitual Residence: A Useful Concept? *American University Law Review*, Vol.21 No.3, pp.475-493; Bozin-Odhiambo, D. (2012) Re-examining Habitual Residence as the Sole Connecting Factor in Hague Convention Child Abduction Cases, *Family Law Review*, Vol.3 No.1 pp.4-17; R.H. Graveson, R.H., Newman, K.M.H., Anton, A.E. and Edwards, D.M. (1969) The Eleventh Session of the Hague Conference on Private International Law, *International and Comparative Law Quarterly*, Vol.18 No.3, pp.618-680; Rogerson, P. (2000) Habitual Residence: The New Domicile? *International and Comparative Law Quarterly*, Vol.49 No.1, pp.86-107

²²⁹ United Nations (1949), *Study of Statelessness*, E/112/E/112/Add.1

conceptual understanding of de facto statelessness, in practice they were not.

State Acceptance of Norms in Numbers

The Normative Instrument	State Parties
1930 Special Protocol Concerning Statelessness (adopted by the League of Nations)	11 ²³⁰
1954 Convention Relating to the Status of Stateless Persons	87 ²³¹
1961 Convention on the Reduction of Statelessness	66 ²³²

As Barutciski (1998: 12) explains, “Being a victim of displacement is not the quality that has historically justified additional human rights protection for refugees. It is rather the *quality of being a foreigner* who has escaped persecution that is addressed by international refugee law...the kinds of rights granted to refugees would not make sense for displaced persons who are still in their country of origin. These rights would be redundant if granted to citizens in their own states. If a government is responsible for having internally displaced its own people in the first place, is it useful to insist that it gives partial rights to employment or access to certain types of welfare benefits?”

The structural, functional and conceptual clarity of the refugee framework and convention stemmed from knowing who should be included and who should be left out. So in 1951 it was decided that those who were forced out of their homes but not out of their countries fell between the cracks of international debates on sovereignty and human rights. They were not stateless and therefore did not require the support of the international actors and other states. Displacement was seen purely from within the perspective of internationally-recognised sovereign borders and in turn the denial of a

²³⁰ Data collated from the UN Treaty Series database

²³¹ Ibid.

²³² Ibid.

nationality or citizenship that ended the moment a person was forced to cross her home country's international borders and seek refuge in another country.

Though the conventions relating to status of stateless persons and the reduction of statelessness²³³ was a step towards addressing the needs and issues of those who were not covered by the 1951 Refugee Convention, these conventions on statelessness did not move away from the “seeking to ensure everyone has their right to a nationality in practice” and thereby providing a “legal framework...on securing national protection for persons who might otherwise be in need of international protection” (Batchelor 2005: 35). The normative framework of statelessness is the replication of nationality norms and particularization of refugee norms by exclusion, that specifically, and ironically, left out the displaced.

However, the incorporation of habitual residence into the definition, characterization and practical understanding of internal displacement may have given the IDP normative framework more flexibility, especially in the post-displacement phase,²³⁴ by not limiting it only to questions of nationality, citizenship or statelessness. This normative break may be beneficial in one way, but from a rights perspective, the principles only refer to no discrimination against IDPs who have returned, resettled or reintegrated and repossession of property to the extent possible with possibility for compensation.

The Guiding Principles make no mention of any guarantee of rights that should be accorded to nationals or citizens, which may not be possible from the point of view of only habitual residence, but it was a step in the right

²³³ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, adopted on 28 September 1954, UNTS Vol. 360, p.117; UN General Assembly, *Convention on the Reduction of Statelessness*, adopted on 30 August 1961, UNTS Vol. 989, p. 175

²³⁴ Principles 28 and 29 relate to the voluntary return, resettlement and reintegration of IDP, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2

direction. The characterization of internal displacement based on habitual residence is also limiting in that it further excludes those who may have been displaced from a temporary residence or location.

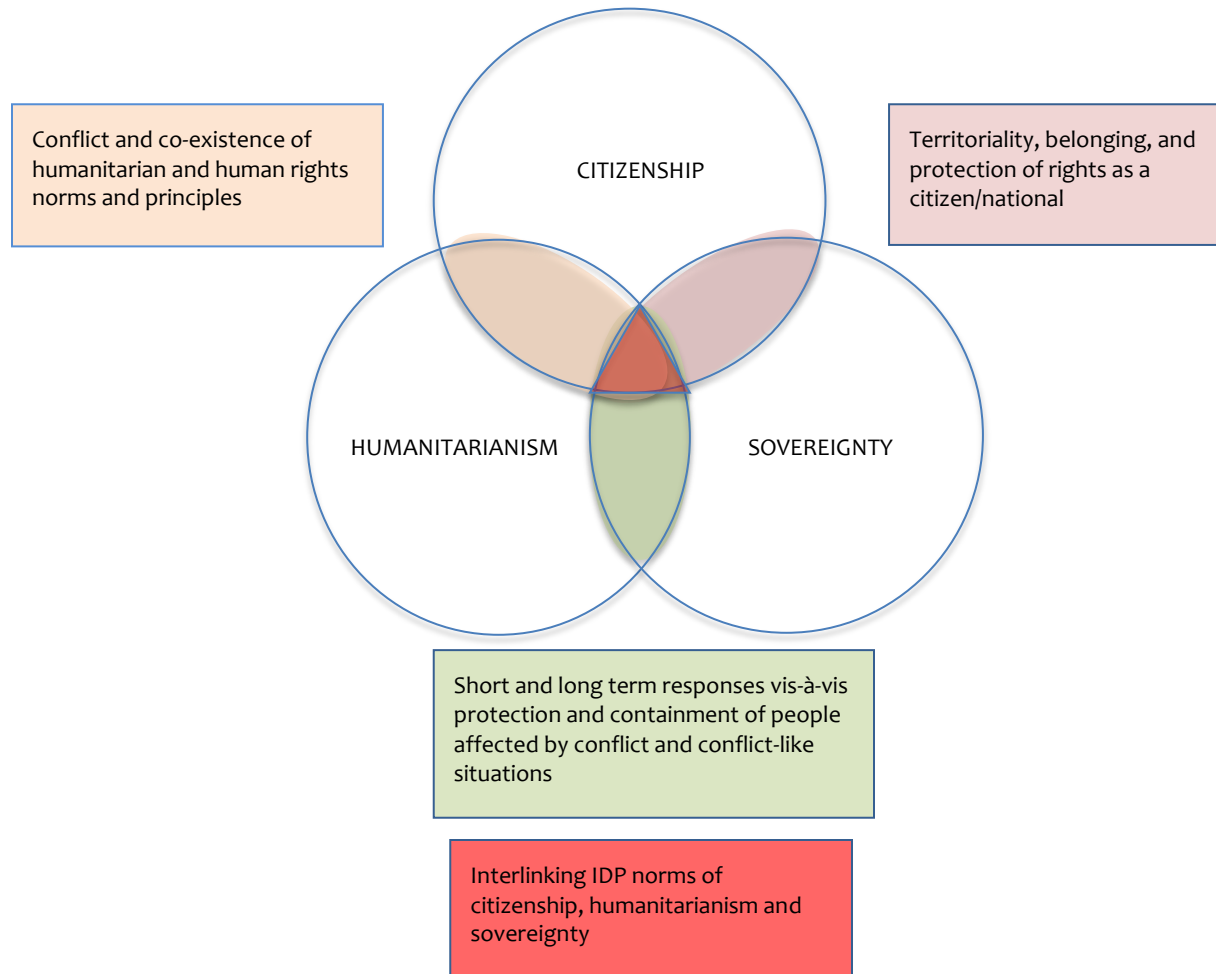
7.1.3.5. Cluster-Analysis Summary

A genealogical exploration of the three clusters above has demonstrated that the international community still considers internal displacement to be a domestic matter though it has gained increasing global attention and discursive space for reasons not entirely to the benefit of IDPs themselves. Nevertheless the international normative project on internal displacement has only reiterated the stronghold of fundamental norms such as sovereignty. The unrelenting hold of sovereignty on international affairs has arguably weakened, but it has not altogether disappeared. It has weakened through regular normative clashes with the human rights or humanitarian frameworks that consistently push put pressure on, and push the “boundaries” of sovereignty.

One of the most foundational normative instruments at the global level, the UN Charter is itself a representation of this normative tension. As an instrument that stands for both the respect for state sovereignty and human rights for all, it is also one that has a high critical mass of states acceptance. However, the numbers are only a demonstration of a state’s willingness to accept an intersubjective understanding and the many dilemmas that come with it. Fluid meanings and understandings also give states normative maneuverability that often is a contributing factor to changing practices and actual state adherence to norms.

The tensions and normative interlinkages between and within the clusters is also revealed in the analyses (see diagram below). For instance, though norms of sovereignty dictate non-interference in the domestic affairs of another state, the practice was flouted to maintain one’s own sovereignty

**Figure 3: Norm Ecosystem of UN Guiding Principles on Internal Displacement:
Cluster Linkages and Normative Overlaps**



and internal peace in certain situations, such as when states did not want to grant asylum, and implemented containment or deterrence policies by creating safe havens in the country of origin in the name of humanitarianism. The primacy of the state is also reflected in the status of individuals – their belonging – before international law by the merit of determining nationality as discussed in the citizenship cluster.

Without effective nationality, or even basic nationality, a person does have access to rights and entitlements. This leads to an interesting legal conundrum with the regard to the claimed primacy of human rights, especially the fundamentality of the right to freedom of movement and its significance to the realization of other rights including right to a nationality. But if one needs a nationality to exercise or even have access to other rights, then there is a legal lacuna in the understanding of human rights. Though in practice, the status of the individual can guarantee some access to rights.

However, some of this complexity may have been overcome in the case of IDPs who are characterized by being forced out of their habitual residence, even in the event that people have the opportunity to end displacement by returning or resettling in a place of habitual residence. Research has shown that IDPs and other displaced persons, especially in protracted situations, prefer to hold on to their displaced identity than claim nationality or citizenship in order to have access to certain rights, such as right to food in the case of Sri Lankan IDPs, or displaced Palestinians who would rather remain displaced than claim citizenship in another country because “the right to return is the highest priority” for them (Mehta and Napier-Moore 2010: 21). Though a favorable characterization, a need to re-examine the concept of habitual residence itself arises when IDPs themselves understand their situations differently. This also leads to the need for a better understanding of internalization and implementation of the Guiding Principles at the domestic level, which may not be as effective as hoped. Analysis in stage 3 discussed in the following section will

also demonstrate how domestic laws on internal displacement, some of which may have come before the establishment of the Guiding Principles have also helped the strengthening of the international norms.

7.2. STAGE 3: Re-examining Internalization – Case Study in Colombia

Habitual residence is also prominent in the domestication of norms on internal displacement. Many countries efforts to legalize internal displacement norms focus on the right to return and property restitution, or registering temporary residences and undergoing further procedures to take up a new permanent habitual residence. Even before the development of the Guiding Principles, the signing of the Dayton Peace Accord of 1995 for Bosnia and Herzegovina (BiH) included a provision that entrusted the UNHCR with assisting the government to implement the Agreement on Refugees and Displaced Persons. The agreement stressed that the “early return of refugees and displaced persons is an important objective of the settlement of the conflict.”²³⁵ In 2001, the BiH government enacted an additional law to regulate “the permanent and temporary residence of citizens of Bosnia and Herzegovina, including the temporary residence of displaced persons in Bosnia and Herzegovina.”

Quite similarly, Georgia enacted an IDP law in 1996, which was amended in 2000 in line with the Guiding Principles. “In 2003 a ruling from the Constitutional Court of Georgia established the rights of IDPs to purchase property without losing their IDP status and entitlement to return and property restitution. IDPs were given the right to vote in local and parliamentary elections” (Kharashvili, Kharashvili and Subeliani 2008: 16). Georgia was one of the three countries, others being Azerbaijan and Turkey, that “made significant progress in bringing their IDP legislation into line with the provisions of the Guiding Principles,” though most European states adopted some form of domestic normative

²³⁵ Annex VII of the *Dayton Peace Agreement's General Framework Agreement for Peace*, 14 December 1995

framework on internal displacement since 1998 (Jonker 2008: 15). Meanwhile in countries like Burma, there was no progress in issues relating to internal displacement.

On the internal displacement map, Colombia has a special place with its protracted armed conflict, unrelenting complex political violence, and endemic nature of displacement and disappearances. It was not until the 1990s that the Colombian government took cognizance of the internal displacement crisis driven by national and international pressure and, more importantly, a strong legal culture. In fact, the Colombian case demonstrates that the state began supporting IDPs before the international recognition of the Guiding Principles based on a reemphasis of the state's other international humanitarian and human rights obligations. Nevertheless, even after amendments, the situation of internal displacement remains dire, as it is an issue that falls solely within the realm of internal affairs and Colombia's internal affairs also remain in a dire state.

7.2.1. A Brief Historical Background of Internal Displacement in Colombia

One of the largest countries in South America, Colombia is rich in resources and culture with an unfortunate history of armed violence, socio-economic conflicts and a war against drugs that has spanned several decades. This longstanding socio-economic, and political violent turmoil has put Colombia in the number two spot in 2014, second only to Syria, of the top five countries that make up the 63% of IDPs in the world, the others being Nigeria, Democratic Republic of Congo and Sudan. Colombia accounts for a massive 5.7 million IDPs in the world.²³⁶

Caught between partisan political parties – Conservatives and Liberals – since the mid-19th century, guerrilla groups since the 1960s and drug lords since the 1970s, people had no other choice but to flee or be forced out of their homes,

²³⁶ IDMC (2014), *Global Overview 2014: People Internally Displaced by Conflict and Violence*

the latter being more common.²³⁷ In this web of conflict and violence, a large number of people were uprooted for their land, which further complicated the displacement discourse in Colombia. This complexity is also recorded in Deng's first report on the country as the UN Special Representative. It was one of the first countries he visited following his appointment. The 1994 report stated: "At the end of the Second World War, 3% of the population monopolized more than half of Colombia's arable land. This gave rise to a protracted period of violence. Known as "*La Violencia*," this amounted to an "undeclared" civil war between the Liberal and the Conservative Parties, the main political parties of the country, following the assassination of a popular political leader, Jorge Eliecer Gaitán, in 1948. Two million peasants fled to the towns and lost their lands or settled in other areas." Even in the latter half of the 21st century, over half of the cultivable land in this South American country remains in the hands of a little over 1% of the population.²³⁸

The UN High Commission on Human Rights on Colombia highlighted this method of enforced displacement as a major cause of internal displacement, and "the most serious consequence of the armed conflict" in the 1998 report.

²³⁷ *Report by the United Nations High Commissioner for Human Rights* at the 54th session of the Commission of Human Rights, on 9 March 1998, E/CN.4/1998/16, paragraph no.12 "Colombia has historically been marked by political and social violence. In this century, the phenomena of political, economic, social and cultural exclusion led to the peasants' campaigns of the 1930s and 1940s, and, later on, to a long period of violence between the two traditional parties, the Liberals and the Conservatives. In 1957, by means of a constitutional reform, a system of alternation and parity between these parties was established. This meant that other political sectors were deprived of any share in power. From the 1960s onwards, a guerrilla movement came to prominence and its origins can in part be explained by the context of the polarization and cold war prevailing at that time...In the 1970s, the drug trafficking phenomenon came to the fore and, spreading to broad sections of Colombian society, gave rise to new forms of criminality and corruption."

²³⁸ Profiles in Displacement: Colombia, Report of the Representative of the Secretary-General, Mr Francis Deng, submitted pursuant to Commission on Human Rights resolution 1993/95 to the 51st session of the Commission on Human Rights on 3 October 1994, E/CN.4/1995/50/Add.1, paragraph no.19. For more on land dispossession in Colombia, see: Fadnes, E. and Horst, C. (2009) Responses to Internal Displacement in Colombia: Guided by What Principles? *Refuge*, Vol.26 No.1, pp.111-120; Richani, N. (2015) Forced Displacement, Concentration of Land Property, and the Rentier Political Economy in Colombia, *Journal of International Affairs* (online); Isacson, A. (2011) Sunday's Local Elections in Colombia: Land Restitution and the "Back Hand," WOLA: Advocacy for Human Rights in the Americas; Summers, N. (2012) Colombia's Victims' Law: Transitional Justice in a Time of Violent Conflict? *Harvard Human Rights Journal*, Vol.25 No.1, pp.219-235

The report highlighted that all parties in the conflict – armed forces, police and paramilitary groups – employed the tactic. “In many cases it is the population suspected of providing a basis of support for the insurgents who are forced to leave their homes and workplaces. Once the inhabitants have been evicted, any land of strategic value in economic or military terms is repopulated with supporters of the military or paramilitary forces thus creating security zones needed to control the land.” And there are also instances when the people are dispossessed at “the interests of certain economic sectors which support paramilitary groups with the aim of increasing their hold over natural resources and productive land.”²³⁹

Enforced displacement is a clear violation of international human rights and humanitarian laws, as stipulated by the provisions of the right to movement and its corollaries, right to life, liberty and property and more in the ICCPR and a whole host of provisions in the 1949 Geneva Conventions and Protocol II to the Geneva Conventions.

Apart from enforced displacement, there are three other forms of displacement recognized in Colombia: Non-deliberate, which is closer to the Guiding Principles definition of IDPs, as being forced to flee, but not as a deliberate policy or conflict strategy. Another category is the displacement caused by interest groups – land developers, corporations, and others – who may be acting through groups of people or individuals. This is quite similar to enforced displacement without the military dimension. The last one is voluntary displacement where people leave their habitual residences for economic reasons, such as cultivating illicit crops in the forest, which thickens the dynamic of conflict.²⁴⁰ Others just categorize displacement as massive and

²³⁹ *Report by the United Nations High Commissioner for Human Rights at the 54th session of the Commission of Human Rights, on 9 March 1998, E/CN.4/1998/16, paragraph no.96; Also see: IDMC (2010) Building Momentum for Land Restoration: Towards Property Restitution for IDPs in Colombia*

²⁴⁰ Norwegian Refugee Council (1999) *Global IDP Database: Internally Displaced Persons in Colombia*, p.19

individual in case of Colombia, where massive is characterized by “the displacement of ten or more households together, while individual displacement is the displacement of a person or family on its own” (Carrillo 2009).

7.2.2. Internal Response to a Spiralling Crisis

The complex nature of internal displacement, the protractedness of the crisis, the magnitude of the problem by sheer numbers alone, and increasing pressure from local religious bodies and NGOs finally got the Colombian government’s attention in the 1990s. According to Escobar, this lack of attention for IDPs was not because they had fallen off the radar, but because they were merged with other marginalized groups and the broad generic policies implemented on their behalf, such as policies for the urban poor in 1970s. In the 1980s, the government extended the efforts to include those affected by natural disasters. It was only in the 1990s that the term “displaced” entered the Colombian discourse and gained its own recognition as needing response from the state. But even then, there were discrepancies in numbers collated by various groups – state and non-state (Escobar 2000).

As the state was beginning to respond to the plight of IDPs, the UN Human Rights Commissioner and the Commission made a move in 1994 to set up a permanent office in Colombia that was signed into agreement in late 1996.²⁴¹ And in 1994, UN Secretary General’s Special Representative on IDPs, Francis Deng visited Colombia, as one of the first countries he studied. Deng’s report also highlighted the discrepancies in the numbers of IDPs owing to reasons such as the vagueness of the definition used to identify them in Colombia, the silent way in which the displaced fled, the rejection by those fleeing from being identified as IDPs, and the lack of a systematic methodology in accounting for the number of people being displaced.²⁴²

²⁴¹ Report of the United Nations High Commissioner for Human Rights on Colombia to the 53rd session of the Commission on Human Rights, on 24 January 1997, E/CN.4/1997/11

²⁴² Profiles in Displacement: Colombia, Report of the Representative of the Secretary-General, Mr Francis Deng, submitted pursuant to Commission on Human Rights resolution 1993/95 at

In fact, the last of the four reasons may be more accurate than the others, as a more systematic approach of accounting for, and registering IDPs began in 1995 under the auspices of the Catholic Church and several NGOs. An earlier attempt by a presidential body was considered a failure. “Thus, while the NGOs estimate that, between 1985 and 1998, violence led to the internal displacement of 1.5 million persons, in 1998, the Presidential Counsel for Displaced Persons estimated that, between 1996 and 1998, there were 340,000 people displaced...” (Escobar 2000: 111). Over 10 years later, in 2009 the discrepancy has not changed much – while government figures put the number of internally displaced at 1.9 million, NGO figures add up to two million more (Cepeda-Espinosa 2009). A high proportion of those displaced were women and members of indigenous groups and those from economically-marginalized background (Carrillo 2009, Summers 2012, and Stirk 2013).

7.2.3. Road to Law 387

Though uncertainty prevailed with regards to identifying and assisting IDPs, the Colombian government became more responsive on the overall human rights front by 1990. And these measures also paved the way for more focused attention on the crisis of internal displacement in the Latin American country by the late 1990s. The Colombian government put a few measures – legally and institutionally – in place that sought to respond to the spiralling human rights situation.

From vesting the municipal ombudsmen with more powers in 1990 to receive and investigate cases of human rights violations, creating an office of People’s Defender under the 1991 constitution that oversaw the promotion, exercise and dissemination of human rights, and a few police reform measures (Amnesty International 1994); to the adoption of a National Programme for

the 51st session of the Commission on Human Rights, on 3 October 1994, E/CN.4/1995/50/Add.1, paragraph no. 11-15

Comprehensive Attention to the Population Displaced by Violence in 1995, the Colombian government seemed to have been internalizing its international obligations. However, many have criticized the lack of substantial impact of these measures on the armed conflict or continuing violence, and in turn on forced internal displacement, including Deng who stated in his 2000 follow-up report on Colombia that the 1995 National Programme “suffered from a number of structural problems.”²⁴³

However despite the shortcomings of these legislations and measures, Colombia is known for its strong legal culture that led to the 1997 law on internal displacement – Law 387. Though the 1991 Colombian constitution prioritizes human rights, it is Law 387 that is “largely responsible for inserting the subject of internal displacement into the Colombian regulatory framework” (Viana 2009). From defining IDPs, their rights and duties, emphasizing the state’s responsibility for IDPs, to establishing 33 articles against, during and after the end of displacement, this 1997 Colombian legislation²⁴⁴ is considered one of the most comprehensive on internal displacement and a legal breakthrough (Cepeda-Espinosa 2009: 6), not only in Colombia but also in the rest of the world. Most interestingly, when the Colombian parliament passed this bill, the Guiding Principles was still under consideration.

In addition to the legal provisions that were a reiteration of existing international humanitarian and human rights laws and standards, Law 387 also enabled the setting up of mechanisms, such as the Central Registry of Displaced

²⁴³ *Profiles in Displacement: Follow-up Mission to Colombia, Report of the Representative of the Secretary-General on internally displaced persons, submitted in accordance with Commission resolution 1999/47 at the 55th session of the Commission on Human Rights, on 11 January 2000, E/CN.4/2000/83/Add.1; For more analyses on Colombia’s response to internal displacement, see: Amnesty International (1994) Political Violence in Colombia: Myth and Reality, AMR 23/001/1994; Carr, S. (2009) From Theory to Practice: National and Regional Application of the Guiding Principles, International Journal of Refugee Law, Vol.21 No.1, pp.34-47*

²⁴⁴ Law 387 of 1997, *Diario Oficial* [Official Gazette] No. 43,091 of 24 July 1997 By means of which measures are adopted for the prevention of forced displacement, and for assistance, protection, socioeconomic consolidation and stabilization of persons internally displaced by violence in the Republic of Colombia.

Population. This made it mandatory on the government to maintain up-to-date information on the number of displaced at all times. The implementation of the IDP law was through a 3-tier system that included a national council, 15 national institutions and local-level committees on internal displacement. A monitoring body was also established. However the problem remained a lack of understanding of the responsibilities at the local level, lack of coordination between the central and the regional administrations, and how best to utilize the resources mobilized.²⁴⁵

There is much criticism about the Colombian experience of dealing with internal displacement, but the most judicious and direct of criticisms have come from within the country, from the country's own Constitutional Courts. Law 387 may not have evolved had it not been for the courts that continuously pushed legal boundaries with regard to overall human rights, and then also assumed the role of monitor and evaluator of public policies, especially on the matter of internal displacement. Usually the court decision of 2004 is highlighted as exemplary in directly criticizing the government on poor and "unconstitutional" ²⁴⁶ implementation of the policies for IDPs. But there were at least 17 decisions before 2004 that related to IDPs. And one of these decisions were as early as 1997, which reiterated the rights of a farmer who was displaced, by upholding his right to freedom, resistance and freedom of movement. Another decision in 2000 highlighted the poor coordination between institutions and the lack of policy development on forced displacement as required under Law 387. Three years later, the court highlighted the need for differential treatment of IDPs, which went on to pave the way for the invigorated ruling of 2004 (Rodriguez-Garavito and Rodriguez-Franco 2015).

²⁴⁵ *Profiles in Displacement: Follow-up Mission to Colombia, Report of the Representative of the Secretary-General on internally displaced persons, submitted in accordance with Commission resolution 1999/47 at the 55th session of the Commission on Human Rights, on 11 January 2000, E/CN.4/2000/83/Add.1*

²⁴⁶ Colombian Constitutional Court Decision T-025/04, 22 January 2004

Some of this credit must also go to the judicial system put in place through the 1991 constitutional reform and mechanism for quick decision on human rights violations through *acción de tutela* – a petition procedure. Once a petition is filed, a ruling must be made in 10 days. IDPs accessed this legal recourse since 1997, which made the courts recognize the humanitarian magnitude of internal displacement. The 2004 Constitutional Court ruling was made on the review of 108 such cases (Cepeda-Espinosa 2006).

7.2.4. How the Guiding Principles Contributed

Though the Guiding Principles were still under consideration internationally during much of Colombia progress on internal displacement, they still had much to contribute, especially because of “their incorporation into the decisions adopted by the Constitutional Court in exercise of constitutional judicial review has granted them additional legal strength, reinforcing their significance for the interpretation of the scope of IDPs’ rights” (Duque 2009: 178). The importance of the Guiding Principles was not only highlighted in the Constitutional Court decision of 2004, but also in 2000 when the court upheld the Principles as “parameters for legal creation and interpretation in the field of the regulation of forced displacement and State assistance to IDPs.” A similar ruling followed in 2001 that sought recourse in several of the Principles.²⁴⁷

The quiet adoption of the Guiding Principles internationally has helped countries like Colombia strengthen an already proactive legal system,²⁴⁸ and more

²⁴⁷ Constitutional Court decision SU-1150 of 2000 and Constitutional Court decision T-327 of 2001, as cited in Duque, F.G. (2009) *The Guiding Principles on Internal Displacement: Judicial Incorporation and Subsequent Application in Colombia* in Rodolfo Arango Rivadeneira (ed.) *Judicial Protection of Internally Displaced Persons: The Colombian Experience*, Washington DC: The Brookings Institute, p.179; For more discussions on IDP-related decision of the Colombian Constitutional Court, see: Martin, S.F. et al. (2005) *The Uprooted: Improving Humanitarian Responses to Forced Migration*, Oxford: Lexington Books; Sandvik, C.B. and Lemaitre, J. (2015) *From IDPs to Victims in Colombia: A Bottom-Up Reading of Law in Post-conflict Transitions* in Matthew Saul, James A. Sweeney (eds.) *International Law and Post-Conflict Reconstruction Policy*, New York: Routledge, pp.251-271;

²⁴⁸ Duque, F.G. (2009) *The Guiding Principles on Internal Displacement: Judicial Incorporation and Subsequent Application in Colombia* in Rodolfo Arango Rivadeneira (ed.) *Judicial*

importantly the case law that the Colombian Constitutional Court has accumulated post 1998 has, in turn, been enabling for the Principles. Firstly, it strengthens the normative basis of the Guiding Principles in that it does fill a humanitarian and human rights with regard to IDPs. And secondly, the court's rulings and decisions are examples of not only how to internalize the Guiding Principles, but also domesticate them legally.

7.3. Summative Case Conclusion: Change and Order through the Guiding Principles

Colombia's case is unique because of the complex nature of internal displacement and its embeddedness in the violent political conflict of the country. But it does not discount the fact that Colombia made substantial normative and legal progress with regard to the rights of IDPs even before the emergence of the Guiding Principles. The effective implementation of policies and laws have been analyzed²⁴⁹ and criticized often, even by the Constitutional Court itself. The structural and institutional weaknesses are at the core of the Colombian situation, but it is proof that progress can be made. The Guiding Principles have also contributed to the strengthening of Colombia's response to internal displacement.

Protection of Internally Displaced Persons: The Colombian Experience, Washington DC: The Brookings Institute, pp.175-203

²⁴⁹ *Profiles in Displacement: Follow-up Mission to Colombia, Report of the Representative of the Secretary-General on internally displaced persons, submitted in accordance with Commission resolution 1999/47 at the 55th session of the Commission on Human Rights, on 11 January 2000, E/CN.4/2000/83/Add.1*

Table 6: Chronology of Dynamic Cascading of the Guiding Principles

Dynamic Norm Cascading of UN Guiding Principles on Internal Displacement						
Time Period	Meaning		Power		Legitimacy	
	Clarity	Specificity	Control	Capacity	Perception	Process
1900s – until the demise of the League of Nations	Territoriality was fundamental	Specific refugees protected	Internal displacement not an international issue	Situating individuals in international law limited	Significant as an international milestone	First international attempt at codifying laws on nationality
Second World War – until Vietnam War	International emergence of human rights put pressure on the normative project of sovereignty	More protection available for those displaced through human rights framework and refugee	Only states could realize the promotion of human rights for all	Human rights and evolved humanitarian frameworks allowed non-state actors to assist and support	Human rights was contentiously proclaimed universal	Consultative, including decolonized states

		convention		those affected by displacement, including IDPs Immediately after WWII, protection of refugees was primarily political		
1975-1995	Shifting focus on IDPs	Protection of refugees diminishing	States pursued containment and deterrence policies	Even the UNHCR could be called in to assist IDPs	Individual states	Most often states unilaterally imposed policies
1998 Guiding	IDPs defined and	Separated from	Sovereignty as	A tool to lobby states	Though states were	Normative re-emphasis and

Principles	categorized, but still within the domain of domestic affairs	refugees and stateless persons Focus on habitual residence provides more legal and practical flexibility	responsibility left the protection of IDPs unresolved		not involved, it was a restatement of existing norms and laws	soft extension
Change and Order	Internal displacement, remains a domestic matter– CYCLICAL.		Constantly pushing against the normative boundaries of sovereignty – CYCLICAL.		Internal displacement is an increasingly accepted issue of international discourse – CATALYTIC.	

On its own merit, the Guiding Principles are a big step in international normative progress in some ways, though not in others. Firstly, and most importantly, the international recognition of the definition of IDPs as stated in the Principles is a solid normative leap. Though it replicates elements of the refugee definition, before the adoption of the Principles, there was no agreed upon definition of IDPs that could be used to be able to justify assisting, supporting and protecting this category of people. However, this also means that creating a label could exclude those who not fit the definition, quite similar to the case of exclusionary categories of nationals, citizens, and refugees and stateless.

Secondly, the Principles also set the tone of the international discourse on internal displacement as a crisis that is beyond just humanitarian. The replication and particularization of human rights in the Guiding Principles makes it particularly important. But this raises a particular concern in that as a instrument that protects IDPs, humanitarian protection is limited. And as a dedicated IDP instrument, it does not refer to the 1949 Geneva Conventions or the its Protocols except in a generic way to state in Principle 2 that, “These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law.”²⁵⁰ Principle 25 also vests responsibility to provide humanitarian assistance with national authorities, which once again limits the humanitarian cover for IDPs. However, as the case of Colombia shows, countries do not resort to a single instrument for answers. In the 2001 ruling of the Constitutional Court on a case where the state refused to register a person as an IDP due to lack of evidence, it held that:

“...it must be very clear that the decree in which the article at hand is contained is the legal development of a Law that recognizes forced displacement as a factual situation; in turn, this Law is the development of a constitutional system to which international provisions have been incorporated, such as the Guiding

²⁵⁰ *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2

Principles on Internal Displacements, issued by the UN, and *Article 17 of the Additional Protocol to the Geneva Conventions of August 12, 1949*, which purport to protect IDPs and do not require a certification of such a factual phenomenon... Finally, according to the interpretative criterion of the most favorable interpretation for the protection of human rights... the provision at hand must be taken to be a *series of guidelines to facilitate an organized protection* of IDPs' fundamental rights."²⁵¹

This is also indicative of the dynamic cascading of international norms, as argued in this thesis, and the dynamic nature of cascading in state adherence as well. Meanwhile, another concern that is raised by the Principles' normative leap is that they are rooted in the ethos of sovereignty as responsibility, which is another way of continuing to relegate the issue of the protection of IDPs to the domestic realm. Though Deng, Cohen and their team were trying to expand the intersubjective understanding of sovereignty to include responsibility, in practice it still indicated the primacy of the state and non-interference in internal matters. But as seen in the cluster on sovereignty, non-interference can be sidestepped for the benefit of some states, such as when implementing humane deterrence policies.

This brings into question the status of a person – normative or legal – at the international level. The genealogical analyses of the clusters show that internationally a person is subsidiary to a state. The status of a person has remain unchanged since the first international codification of laws on nationality, followed by the emergence and continuing expansion of the international human rights framework. Beyond territory though the individual is the focus of sovereignty, normative tension over the right of the state and those of people continue to clash with slow and incremental benefit to the individual, as the

²⁵¹ Colombia Constitutional Court decision T-327 of 2001, as cited in Duque, F.G. (2009) *The Guiding Principles on Internal Displacement: Judicial Incorporation and Subsequent Application in Colombia* in Rodolfo Arango Rivadeneira (ed.) *Judicial Protection of Internally Displaced Persons: The Colombian Experience*, Washington DC: The Brookings Institute, pp.175-203 (emphases added)

human rights can only be realized through the state. Normative tension and clashes are not an undesirable phenomenon; they are needed to establish order and enable change, which can be incremental in some cases, and faster in others. In the case of IDPs and the Guiding Principles, change has been defiantly slow but evident and important, as the replication and particularization dynamics has demonstrated in the norm clusters of sovereignty, humanitarianism and citizenship.

CHAPTER 8.

CONCLUSION

The development of the Guiding Principles on Internal Displacement was a positive move by the international community in an effort to engage in an issue that is primarily considered a domestic matter. Scholars, including Weiss and Korn (2006) claim that the IDP norms were paradigmatic in its impact on existing discourse and international normative structures. This present research aims to examine whether the norms that underpin the Guiding Principles have been defining, as claimed, in its impact.

In order to carry out an in depth study the Guiding Principles, Finnermore et al's classic life cycle model of the constructivist theoretical framework on international norm development is used. This initial examination revealed inherent weaknesses in the constructivist model itself making it inadequate for a comprehensive study of the Guiding Principles, leading this thesis to propose that:

Constructivist accounts of how norms spread and develop are deficient in terms of the mechanisms by which these processes occur. Norm cascading is more dynamic and multi-dimensional. Norms extend their reach and reinforce their power and legitimacy through replication and particularization before state acceptance and adherence, and do not merely cascade through state adherence.

Two questions guide this present research. The first question is: How do international norms cascade before state acceptance and adherence? The second question relates directly to the case of the Guiding Principles: What are the normative underpinnings of the Guiding Principles, and how have they cascaded within existing international normative structures?

Thus this present research sets out to achieve two objectives. The first is the development of an enhanced life cycle model that would enable a deeper and examination of norm development and cascading as dynamic and complex processes. The feasibility and strength of the reformulated framework is thoroughly tested using two preliminary test cases – UNSCR 1325 (2000) and the 1993 Chemical Weapons Convention. The application of the enhanced model on the two preliminary cases not only substantiates this present research's thesis on the complexity of norm development and cascading, but also strengthens and tightens the revised framework and its application. The fine-tuned revised framework is then ready to realize the second objective, which is a multi-dimensional study of the Guiding Principles to better comprehend its normative significance – both in terms of impacting change and maintaining order. The enhanced model is also tested on other international norms to substantiate its robustness, and that of the research proposition.

This concluding chapter will start with a discussion on the formulations that enabled the development of the enhanced life cycle model. Then the research findings are set out in sections 8.2 to 8.4 in response to each of the research questions and objectives. The final section discusses future research implications.

8.1. Formulations on the Enhanced Theoretical Framework

There are a handful of constructivist theoretical frameworks that model international relations by laying out the development and diffusion of norms. Much of these draw on Finnemore et al's life cycle framework. The theory lays out straightforward stages to the life of a norm. It starts with the origin of ideas in the international system – norm emergence. Then moves on to collective acceptance of common meaning, which may have come about cooperatively or competitively, thereby cascading the norm. This eventually leads to the normalization of practice – internalization.

Examination of the classic life cycle model in this present research's effort to develop an enhanced version revealed a few weaknesses. Though a compelling framework, it is limited by operational design, and restricted in how it understands the constitution of its fundamental elements – agency and structure – how they influence each other, and how they remain stable or affect change or both. The classic life cycle view is limited in that though it delineates the stages of norm development, the norm itself is not at the core of the framework. This obfuscates the constructivist tenet of the centrality of norms, primarily because the framework is agent-centric and agent-driven. The quantifying and qualifying measure of the development and life of the norm is unduly reliant on state acceptance of a norm and adherence to it.

The norm life cycle is also synchronic in its assessment situating the development of a norm in a spatial and temporal vacuum. By starting the life cycle with the emergence of an idea and the norm entrepreneur(s), the classic framework delinks the emerging (or new) norm from existing structures. From emergence to tipping point, cascading and internalization, the life cycle is a compressed and linear exposition of how an international norm is constructed, and does not adequately support understanding because it relatively disregards the significance of structure. Though Finnemore et al's life cycle reveals the patterning of interaction; it overlooks the continuity of interaction over time (Giddens 1979).

An enhanced framework would allow for the study of continuity of interaction within existing normative structures – norm ecosystems. It would also recognize and understand existing agency and structures, their existing relationship and dialectical dynamic, and the interaction created between them in the case of the emergence of a new norm or continued development of an existing norm. In the classic life cycle framework, patterns and continuity of interaction is also limited to state acceptance and adherence. These, and more limitations, discussed in

chapter 3 provide the basis for a reformulated theoretical approach for a deeper and dynamic study of a norm's life, with specific focus on cascading.

This thesis argues that norms cascade, i.e. develop and diffuse, in a more complex and dynamic way that is not limited to state adherence. It specifically explicates the processes of replication and particularization. Operationalizing this approach, a revised framework has been proposed with the insertion of mid-level theoretical building blocks. Starting with the emergence of a norm, as in the life cycle framework, the revised version then adopts a genealogical norm cluster analysis, and thereafter reconnecting with the original framework with a better grasp of the cascading process of state adherence, and finally internalization.

8.2. Research Findings: Theoretical Contributions

Addressing one of the research questions 'how do norms cascade,' this present research delivers answers theoretically and empirically. The empirical findings will be discussed in the sections 8.3 and 8.4 that focus on the preliminary case studies – UNSCR 1325 (2000) and the 1993 Chemical Weapons Convention – and the in depth examination of the Guiding Principles respectively. The theoretical findings are two fold. The first is the reconceptualization of norm cascading, and the second is the development of the enhanced life cycle model.

8.2.1. Reframing Norm Cascading

In examining the life cycle framework, one of the drawbacks that were inferred was the constrained orientation of the concept of norm cascading. It was merely a quantitative variable, when in fact it is a rich theoretical percept. Having extracted its ontological bearings in the original framework, this research goes on to redefine norm cascading as an overarching concept in the life cycle that is not only limited to state adherence driven diffusion, but also the creation and development of a norm as well.

Though Finnemore and Sikkink lay out the groundwork for understanding norm cascading in their life cycle model, they do not go beyond a quantitative agent-centric and agent-driven acceptance of norms. There is much in the constructivist and associated literature that helps this research extract and unpack norm cascading as: (i) Gain meaning and reach (ii) Create power (iii) Establish legitimacy. Examining and extracting the construct of norm cascading allows this thesis to begin to answer the research question ‘how do norms cascade,’ by reframing the concept to encapsulate a dynamic norm life. In its dynamic form, norm cascading includes: (i) Extending meaning and reach (ii) Reinforcing existing power and creating power by association (iii) Strengthening existing legitimacy and creating legitimacy by extension. In characterizing norm cascading as a continuous process, a dynamism is put in motion from the very stage of norm emergence – from the very initiation of the framing and affixing of meaning, defining and conceptualization, and (re)construction of social reality.

This conceptual development and reframing not only situates norm emergence and evolution within existing ideational structures and agencies, but also enables a better comprehension of patterning and continuity of interaction. The reformulation of norm cascading also allows for a nuanced view of norm development in which meaning and reach is formed, reformed and reinforced, power is established and reestablished, and legitimacy is created, strengthened and refortified. This expanded theorization of norm cascading also reorients the gravitational center of the life cycle framework, which is the second theoretical contribution of this thesis.

8.2.2. Developing the Framework

Finnemore and Sikkink (1998) norm life cycle is the basis of our reformulated framework. Employing a genealogical cluster approach, the emergence, development and evolution of a norm is revealed not only in a dynamic way

before state adherence, but also in a new light from the process of state adherence as well.

This enhanced new model is operationalized in three stages: Stage I – Synchronic Diagnostics, Stage II – Genealogical Exploration, and Stage III – Rethinking Internalization. Stage one starts where the original model begins – with the norm entrepreneur. Here the emphasis is on the narrative of creation as in the original, and in addition further explores the static meaning, power and legitimacy of the norm being studied. This first step lays the groundwork that enables the identification of the relevant norm clusters that could be further genealogically explored in stage two. The revised model recommends the identification of three clusters for reasons of feasibility.

Each cluster provides a point of departure for a genealogical analysis of the respective norm cluster. Conceptualized by Nietzsche (1887) and popularized by Foucault, the genealogical method not only provides a historical perspective to the development of an international norm and its cascading, but also does so in a non-linear, non-causal manner. In this way, the model is not looking for origins of norm clusters as much as it is seeking “to reestablish the various systems of subjection: not the anticipatory power of meaning, but the...play of dominations” (Foucault 1980: 83) whether in the normative structures itself or in the dialectical nature of agency, and most often both. This dynamism and complexity is revealed through a history that emphasizes “contestation,” (Klotz and Lynch 2007: 31) “chance occurrences, fortuitous connections and reinterpretations” (Price 1995: 86) that have sometimes led to change and at other times maintained order and as this research proposes, both.

The stage is further validated by relinking to the original framework with its emphasis on state adherence by numbers. The quantitative indicator strengthens this stage by looking at the number of states that have ratified the instrument under study or those been borrowed from over time. This provides a

better understanding of what and how norms are internalized in the last stage, which is also a revision to the original model.

8.2.3. Strengths and Challenges

The enhanced analytical framework for examining and understanding norm life cycles presented in this thesis has proven to a number of strengths. One of the first indicators of its strength was demonstrated when the enhanced model was feasibly applied in the two preliminary test cases. This initial testing also showed how the enhanced model could be adjusted for better operationalization and application. The individual findings of the two test cases will be elaborated in the next section. Though the starting point of the revised life cycle model is similar to that of the original model, the overall framework is advanced with a temporally decompressed genealogical analysis that reveals normative synergies through the dimensions of meaning, power and legitimacy, interactions within norm ecosystems, and influence of structures on agency, as well as sway of agency on structure. Therefore not only has the significance of norms – a constructivist tenet – been upheld, but also it has reinforced the understanding of the role and dynamics of agency without an overemphasis on state acceptance and adherence.

Its strength also lies in that the framework is able to capture the nature and interactions of change and order beyond just changes in state behavior determined by adherence. It reveals stability and evolutions in structures as well as agencies through interactions in, and over time. The nature of change is captured through the application of the revised model when the resulting analysis reveal increasing reach and reinforcement of social structures, elaboration and integration of focused practices into existing norms, and shifting parameters of legitimacy. These and more indicators of change also signify that this change is actually “rooted in existing social structures, maintained by the power of practice and quite impervious to change” because constructivist power is also the power “to reproduce, discipline and police” (Hopf 1998: 180).

Therefore change can be progressive and enabling as well as hegemonic and disciplining in the Foucaultian sense. This critical approach shows that Change and progress in international relations seldom means to “climb towards the top, but mainly away from the abyss,” to quote Emmanuel Adler (1991: 77). Change is not always a dramatic big bang; sometimes it is slow, gradual and an ongoing process, as this present research demonstrates. Findings from the case studies also reveal that change is incremental, and relies heavily of existing political, social, economic and normative frameworks, situations that may be at time historically continuous and at other times disjointed.

Meanwhile, the application of the model demonstrates that a genealogical approach may be challenging. The overlapping and long time periods that could be involved in the analysis, and the dynamics of the interlinking norm clusters can lead to complicated inquiries. The process of choosing norm clusters for the genealogical phase of the enhanced model is also complex. The choice of norm cluster defines the extent, depth and feasibility of the genealogical analysis. For instance choosing the cluster of complete disarmament in the test of the Chemical Weapons Convention enabled an elaborate examination of some of the structures in this norm ecosystem. It may have been a concise inquiry had the choice been a cluster on sanctions. Instead the brief analysis on sanctions was part of the more comprehensive genealogical examination of the cluster on complete disarmament. Sometimes, the choice of cluster is evident. The sovereignty cluster in the in depth study of the Guiding Principles was an obvious choice. Though it is quite a complex norm extending over quite an expansive time period, the sovereignty cluster is integral to the study of IDP norms. The Guiding Principles were formulated on the ethos of ‘sovereignty as responsibility,’ and therefore an in-depth study without a sovereignty cluster would be an incomplete one.

The extent to which the enhanced framework is feasible has been examined and tested using the two preliminary test cases and the in depth study of the Guiding Principles. The robustly feasible framework that is based on addressing some of the weaknesses of the classic life cycle model and a reconceptualization of norm cascading, specifically through the mechanisms of replication and particularization, is a comprehensive response to one of the research questions, ‘how do norms cascade.’ The following section elaborates the findings inferred in the preliminary test cases. The application of the enhanced model on UNSCR 1325 and the Chemical Weapons Convention is a corroboration of the theoretical contributions of this present research, and an extension of the answer to one of the research questions, ‘how do norms cascade.’

8.3. Research Findings: Contributions to Knowledge from Preliminary Case Studies

The case studies were of two types – preliminary and in depth testing. UN Security Council resolution 1325 (2000) on women, peace and security, and the 1993 Chemical Weapons Convention were used to test drive the revised framework, and fine-tune its elements and application. Although there is a wealth of research on cases like UNSCR 1325 and the CWC, the reformulated life cycle model enables a deeper examination of the normative underpinnings of these cases. The application of the enhanced model studies the emergence of the test cases in relation to the forming and reforming of meaning, reiteration of power and legitimacy. The findings also demonstrate how respective test cases fits into, extend, and conflict with existing constructs of structure and agency.

8.3.1. Findings on UNSC Resolution 1325 (2000)

Policy and development practitioners, human rights and women’s activists, national and international non-governmental organizations and countries across the world, and the UN itself have hailed UNSCR 1325 as a milestone, a historic

landmark (Pratt and Richter-Devroe 2011), not only for women all over the world, but also for the progress of human rights, human development and peace and security. As a succinct 18-point landmark document, it gave practitioners, researchers and other professionals in the fields of peace, security, and gender issues the reinvigorating boost they needed in the post-Beijing years to keep their overlapping agendas moving forward. It is also the only resolution of its kind to be adopted by the UN Security Council. This is also not to say that the resolution has not been criticized. Scholars (Ellerby 2013; Bjarnegard and Melander 2013) and practitioners have criticized the implementation and realization of the provisions of the historic resolution. However the critical analysis in existing literature on UNSCR 1325 is limited because it does not delve into the normative foundations of the resolution. The normative understanding of the women, peace and security resolution is also limited within the framework of the four pillars of prevention, protection, participation, and relief and recovery.

However the enhanced examination of the development of UNSCR 1325 demonstrates that it needs to be understood in terms of the way it brings together clusters of norms that has been developing and spreading for some time. In this sense, the analysis of the testing highlights that UNSCR 1325 is more limited and complex as a normative milestone than much of the literature presents. The analysis of the development and cascading of UNSCR 1325 in this present research does not argue that it is not historically important in several respects.

Our analysis highlights that UNSCR 1325 is an important extension of the existing international normative structures. A synchronic analysis of UNSCR 1325 demonstrates that the meaning, power and legitimacy of this international norm extend beyond just women, peace and security. It reveals that women, peace and security is being embedded into larger existing international normative frameworks, or parts thereof. Three such norm clusters were

extracted for a genealogical exploration – humanitarian protection of women, liberal peacebuilding, and gender balancing. The emphasis on protection of women is based in the replication of existing international humanitarian standards and practices. Meanwhile, much of the focus on participation in UNSCR 1325 emphasizes norms of liberal peacebuilding. The overall agenda of gender equality and gender balancing also has long and deep normative roots. UNSCR 1325 is not only embedded in these normative frameworks, but the construct and cascading of these respective clusters continue through the construct and cascading of UNSCR 1325 via the replication and particularization of abovementioned norms or normative principles in the resolution.

The biological focus of the humanitarian protection of women remains intact to this day through the four 1949 Geneva Conventions adopted in the aftermath of World War II, and the ensuing two Additional Protocols to the Geneva Conventions. They contain a score and more provisions that relate specifically to the protection of women. Though scholars such as Krill (1986) and others describe it as a feature of equality, this research contends that there is a tension within international humanitarian law, specifically in the Geneva Conventions, in trying to balance the special protection needs of women and reiterating non-discrimination in general humanitarian protection. While there are provisions that emphasize that the execution of humanitarian treatment should be “without any adverse distinction founded on sex...”²⁵² and treatment

²⁵² Article 12 of Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31; Article 12 of Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85; Article 16 of Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135; Article 27 of Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287; Article 75 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3; Article 4 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 UNTS 609

of women “as favorable as that granted to men,”²⁵³ provisions in the Conventions also emphasize that “women shall be treated with all the regard due to their sex.”²⁵⁴

The genealogical unpacking of the norm cluster of liberal peacebuilding revealed that the link between women and peace goes back decades, even before 1992 and the birth of liberal peacebuilding. It also became clear that links between women and peace were not first established in 2000 through UNSCR 1325. It has been deeply rooted and recognized since the 1970s, with emphasis on the increasing role of women in decision-making, democratic institutions, and better economic conditions for women. These are the fundamentals of liberal peacebuilding as well. UNSCR 1325 reiterates some of these normative links, its meaning, power and legitimacy between women and liberal peace, with a particularization in the specific context of peace and security in conflict and post-conflict phases.

The biggest normative question when it comes to women and their status is equality. Though UNSCR 1325 includes provisions that promote gender sensitivity, and encourage special attention to gender-specific needs, like many of its predecessors the normative misconceptions of the term ‘gender,’ and its synonymy with women, often as the weaker sex, continue. Barrow (2010) and others, especially Chantal de Jonge Oudraat (2013: 613), claim that UNSCR 1325 has responded to this issue with its central underlying theme of gender balancing, which “has to do with equal rights and the number of men and women engaged in international peace and security policies.”

²⁵³ Article 14 of Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135

²⁵⁴ Article 12 of Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31; Article 12 of Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85; Article 14 of Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135

However the problematique and the response are not entirely unique to the peace and security context, or UNSCR 1325. The gender question has been an ontological and epistemological tug of war between eliminating discrimination and highlighting differences since women began fighting for their rights. The response has been a balancing act in one form or another through the centuries. The study of UNSCR 1325 shows that it brings together norms, normative principles and practices of at least 200 years together. Perhaps it is for this reason – cascading change and order simultaneously – that it is more historic than for its creation in 2000 alone.

Though unrelated incremental changes in the protection of women, and their debatable implementation and realization has taken place, it has been within the prevailing larger normative framework of the primacy of sovereignty and international peace, human rights, peace and development, and/or human development. This indicates both catalytic movement towards the demands and agenda of women's rights, and also cyclical movement of the broader normative and priority-wise more superior frameworks.

8.3.2. Findings on 1993 Chemical Weapons Convention (CWC)

The study of the 1993 Chemical Weapons Convention was interestingly revealing too. With war and armed conflict, warfare technology grew. In a vast array of destructive technology, chemical weapons came under intense international scrutiny. In this sense, the Convention on the Development, Production, Stockpiling, and Use of Chemical Weapons and their Destruction (CWC) is considered unique in the history of arms control. "There was no precedent for this global, comprehensive and verifiable multilateral disarmament agreement. The chemical weapons Convention provides for a cooperative, non-discriminatory legal instrument to eliminate the spectre of chemical warfare once and for all" (UN Yearbook on Disarmament 1992).

These words by the Chairman of the Ad-Hoc Committee on Chemical Weapons, Adolf Ritter von Wagner epitomize the significance of the treaty. The revised life cycle model reveals how understandings of norm development and cascading in this area are better comprehended within a wider framework of international norms. Three norm clusters were chosen to better understand the CWC norm development and cascading processes within agendas for: complete disarmament, non-use of poison, and the control and balance of dual use of prohibited substances.

General and complete disarmament (GCD) is the core of the international arms control normative framework, and it is reflected in many of the treaties, resolutions, and other hard and soft international laws, including the CWC. Predecessors to the CWC also reiterate this international normative stand on GCD, such as in the Nuclear Non-Proliferation Treaty (NPT) of 1968, which mentions twice that states undertake the obligations in the NPT to work towards general and complete disarmament. But GCD is not unique to the modern-day arms control normative framework. Scholars such as Jonas (2012) claim that GCD has a history that dates back further than the NPT, while others like Rydell (2010) claim that it dates back centuries and millennia.

And as history shows, GCD did not always begin as general and complete. It was simply disarmament, which in its strictest sense “means the physical destruction or elimination of certain types of weaponry” to a more fluid understanding that includes measure “various confidence-building measures, limitations of range or yield, reduction in numbers...more appropriately called arms control” (Rydell 2010: 227). So disarmament began with control, and grew to include a whole spectrum of measures that would eventually be general and complete.

However the normative underpinnings – meaning, power and legitimacy – of control was linked to the normative and practical necessities of national security

as far back at Woodrow Wilson's 1918 Fourteen Point Speech to Congress, which was also adapted in the 1919 Covenant of the League of Nations. While Wilson's Fourth Point suggested that, "national armaments will be reduced to the lowest point consistent with domestic safety," Article 8 of the Covenant not only linked reduction in armaments to levels required for national safety but also to "...the enforcement by common action of international obligations."

In fact, even earlier instances of arms control can be seen in the 1800s. This had less to do with control, and more to do with outright prohibition – more in line with GCD. Earlier prohibitory norms were rooted in the collective agreement on not national safety, but unnecessary human suffering. So in 1868, the St. Petersburg Declaration renounced the use, in time of war, of explosive projectiles. In 1899 a Hague Declaration on Expanding Bullets was made in the effort to prohibit the use of these weapons that inflicted unnecessary cruel wounds.

Therefore since the documenting of modern international laws of war, there has been a normative desire – in one form or another – for disarmament, which has grown to be understood as general and complete. But today – unlike from where its normative roots originate – GCD is not always general and complete disarmament. It allows for measures such as declaration, verification and even sanctions in an effort not only to maintain arms control, but also to allow for accepted use of prohibited materials.

The norm cluster on dual use is an extension or sub-set of the norms on GCD. As Meier and Hunger (2014) contend, "Efforts to stop the spread of weapons of mass destruction (WMD) increasingly focus on preventing the proliferation and misuse of dual-use technologies." The belief and understanding that science can appease the laws of war with laws of humanity seems to have extended to the possibility that advancements in prohibited materials – as those used in WMDs for instance – can have positive benefits. This, as Price (1997: 17)

argues, is because of “the dominant interpretation of technology as a value-neutral phenomenon.”

Though this understanding of technology is reflected in today’s international framework of arms control, there have, nevertheless, been some shifts in its normative underpinnings, as this research revealed. Certain weapons are prohibited as a whole, including those that make the list of the WMDs. This means that the prohibition is also on the technology itself. And dual-use is now focused on the materials that are used in the prohibited weapons – a shift from the ends to the means. This shift came in the international debates of 1925, where with the inclusion of poison into the international arms control agenda came the realization “that nearly all materials used in chemical weapons were to be found in non-military industrial products and processes” (Bryden 2013: 21). It can be inferred that dual-use norms have made arms control, especially GCD a shade greyer today.

Similar normative shifts were seen in the third cluster on the prohibition on poison that underlies the two previous clusters. Norms on the prohibition of poison were set in writing as early as 1863. This research shows that though GCD is in line with repeated prohibitions on poison, allowances on dual-use seem to contravene it or at least make the prohibition of poison tricky. However, It is the combination of the prohibition on poison as a weapon and technological advancements that could be used as poisoned weapons that are the normative lineage of the CWC (Price 1997).

The 1993 Chemical Weapons Convention replicates the taboo on poison in its prohibition and extends it to include a taboo on its development, production, stockpiling and not only use. However, the immediate precedent for this was set in the 1991 UNSC resolution on Iraq made under Chapter VII that demanded Iraq do the same under a sanctions regime. The control processes that define the CWC, including allowances for dual-use advancements were also replicated

from its predecessors – the NPT and BWC. The most unique aspect of the CWC is that its adoption enables the international normative ambitions for general and complete disarmament by bringing it a little bit closer.

8.4. Findings from In-depth Study on the Guiding Principles

As stated in chapter 1 and at the beginning of this chapter, one of the research questions, and main objectives of this research was to develop the first in depth examination of the development and cascading of international norms on IDPs, and in particular the UN Guiding Principles on Internal Displacement. Over two chapters, this thesis synchronically and genealogically examines the Guiding Principles contributing to a detailed understanding of their meaning, power and legitimacy, and their development, construct and cascading. Of the three case studies in this present research, the Guiding Principles are soft law, which unlike a treaty and resolution are theoretically and technically not legally binding. However, it has been understood that the legality of the instrument does not matter, and does not diminish its normative significance any more than any hard international laws. The model is applicable with any type of norm and is able to examine its construct and significance.

8.4.1. The Emergence of the Principles: Findings

Internal displacement is one the most difficult human tragedies on a number of fronts – politically, internationally, normatively, etc. It is one of the most complex issues – especially in relation to the protection of civilians – that the international community has flirted with for decades, and continues to do so with no signs of clear or full commitment. Kofi Annan called it a formidable humanitarian, human rights and development challenge for the international community (Cohen and Deng 1998); it still remains so, as this research has demonstrated.

Though a challenging international issue, one of the primary normative milestones attributable to the Guiding Principles is that it, in no uncertain terms,

raised the crisis of internal displacement to the international level and put it under a global spotlight. A loose and informal coalition of NGOs and their representatives, and states like Norway, Hungary, Austria, can be considered the norm entrepreneurs. Their persistent lobbying made the appointment of a Special Representation possible in 1992. The first Special Representation, Francis Deng, turned out to be a strong ally for the informal coalition.

Deng used all the support that he continued to receive from governmental and non-governmental allies to pave the way forward for the development of an international instrument on internal displacement. This new instrument would not be setting new standards but would be a compilation of existing international standards that would be useful and relevant to the protection of rights of IDPs. Though the proposed compilation was to be a legally binding declaration, it was eventually developed as normative guidelines. This research carries out a comparative assessment of four drafts of the Principles to understand its construct.

The biggest shift in the drafts was the drastic change in the definition of IDPs. It was loosened up to be as inclusive as possible, without unnecessary restrictions. This was one of the major achievements through the drafting process. Another major achievement was the special focus on vulnerable groups such as women and children, whose rights and special needs were at the forefront of international deliberations through the 1990s as also demonstrated in the preliminary case study of UNSCR 1325. The involvement of the Women's Commission in the drafting process can be credited with the nuances of language and relevant focus on the matter of women and children. The first part of this third case in chapter 6 also systematically identifies where each principle is drawn from, and what mechanism – replication, particularization or both – is being used.

8.4.2. Genealogical Analysis: Findings

The first part led to the extraction of three clusters – sovereignty, humanitarianism and citizenship. The sovereignty cluster is significant because the Guiding Principles is rooted on the normative understanding of sovereignty as responsibility. The sovereignty cluster examined the normative tension between the rights and responsibilities of a state vis-à-vis the rights of its people that the former has to protect. To be able to carry out a valid, reliable and feasible analysis, the research focused on three aspects: freedom of movement, seeking and granting asylum and deterring displacement. The findings revealed that though people, their needs and rights, gained in importance as revealed in the first cluster above, the significance of the state and its norms of sovereignty did not shift or cascade accordingly, or loosen up as many claim.

The fundamental norms of freedom of movement as a human right and the norms of sovereignty as a prerogative of the state, an especially binding force at the level of the international community of states, is at the core of the displacement discourse and the frictional cascading of norms within it. According to Barkin and Cronin (1994), though national sovereignty was given international precedence after the First World War, a normative reconstruction – a reconfiguration that could always cause normative friction – was embedded into the international institutionalization of the global order with the establishment of the UN Charter.

“The charter affirms as the first purpose of the UN the maintenance of international peace and security. It defines this as the prevention of the violation of established state borders by the forces of other states. This clearly establishes the priority of the integrity of established state borders over the integrity of national or nationalist groups. The charter also affirms the principle of the self-determination of peoples, but not of nations...As long as a state adequately represents its people as individuals, other states cannot legitimately claim to represent some of these people as members of its nation.” So by

reducing the construct of a nation to that of individuals, the state as a territorial construct is replicated as a priority.

The fundamentality of sovereignty – state and nation – has also come under intense normative pressure from the international institution of asylum that is practiced and realized at a state level. The construction of the right to seek asylum does two things: first, it identifies that individuals have this right and in turn lays the foundation of the categorization of such individuals. In so granting this right, it also separates the individual from the state indicating that the state does not have a claim over the individual (Boed 1994).

Norms of sovereignty and their cascading remained strong in relation to the cascading of human rights, especially with regard to the freedom of movement and right of asylum. Though the former came up against emerging norms in the latter, the former prevailed over the latter in that the respect for, and realization of human rights for all at the domestic level depended on and were based on the respect for, and observation of sovereign equality at the international level. Though the right to seek and enjoy asylum is rooted in the UDHR, it is not normatively accepted as a right in practice.

Even in the practice of granting asylum changed with bearing on the normative understanding of internal displacement. The burden of granting asylum grew with the increasing number of refugees from the early 1970s, and growing mass flight by the end of the Cold War. The international community of sovereign states was coming together to cooperate on bearing the burden of granting asylum, but it was a growing international cooperation towards lesser asylum, not more. Though the asylum applications rose, the recognition rates fell, notes Rogers (1992).

Shifts in political attitudes towards refugees and asylum seekers translated into concrete policies and strategies of ‘humane deterrence’. Misleading in its

terminology, 'humane deterrence' policies were first implemented in the early 1980s in response to the Indo-Chinese influx into South-east Asia (McNamara 1990). Other policies, such as the Comprehensive Action Plan of 1988, Dublin Convention of 1990 and ensuing regulations, and safe country tagging all mutilated the asylum and refugee normative understandings and practices. However, there was a normative double standard in the practice of sovereignty as well. While humane deterrence policies were in order to protect the sovereignty of receiving states, strategies that sought to avert refugee flows was interference in the sovereignty of countries of origin.

This present research demonstrates that norms of sovereignty have remained steadfast in the face of emerging norms of protection and rights of the displaced. From a rejection, to formulating international laws on the right of asylum – fundamental to upholding the freedom of movement and thus other rights as discussed above – to establishing international policies, programmes and strategies that deterred even a humanitarian response to asylum seekers, there has been a growing intensity to, and continued cascading of the norms of sovereignty in that the exercise of sovereignty is a state's prerogative, which especially includes granting territorial admission to people.

This normative conflict leads to further complex understandings in the humanitarian cluster not only because of the sovereignty lies at the core of the displacement discourse, but also because though the Principles applies to those displaced beyond situations of armed conflict international humanitarian laws apply only to these said situations. However as this research has explored, humanitarian assistance and protection has also expanded its normative boundaries of meaning and practice and goes beyond violence and armed conflicts. But even within the cluster of humanitarian protection and assistance limited to armed conflict, there have been norm shifts and regresses, marking a cascading that moved forward at some times and retrograded at others.

We found that though the 1863 Lieber Code laid the foundation of international humanitarian law its provisions on the treatment of civilians during civil war was not carried forward, and did not cascade. A normative break came in 1949 with the inclusion of Common Article 3 to the Geneva Conventions. Therefore in 1949, though small, a consensus to include Common Article 3 into the Geneva Conventions was a big leap in international norm cascading and shifting that brought all civilians under the purview of international humanitarian laws.

This laid the groundwork for the 1977 Additional Protocol to the Geneva Conventions. The drafting and adoption of Additional Protocol II was an exercise in restating the importance of existing international humanitarian norms, replicating them to a large extent within provisions of Protocol II, and particularizing them by extending the existing understanding to include situations of non-international armed conflicts. Protocol II is limited in scope in design and operationalization. For instance, this research reveals that it provides limited agency compared to Common Article 3 that referred to “parties to the conflict” ensuring conformity to the Geneva Conventions through some form of a special agreement in the last paragraph of the article. Protocol II makes no such reference.

From a holistic point of view, the development of Protocol II seemed to be marked by a cascading stasis, almost a step back, because of its limited scope and nature though it replicated and particularized the normative essence of then existing international humanitarian laws. Though the international community of states accepted the replication and particularization of normative essence of the existed intersubjective framework, they were reluctant to frame the elements or nuances of the replicated norms any further. However, the realities of international humanitarianism on the ground through the 1960s and 1970s were a testament to this norm cascading stasis and regression. States were taking a step back, and letting non-governmental organizations (NGOs), including the ICRC, to take their place, giving rise to a new humanitarianism. Chandler

(2001) notes that in the bipolar world, relief charities stepped in where states could not because their humanitarianism seemed universal and politically neutral.

The coming together of humanitarianism and human rights has strengthened the protection of civilians, including IDPs, in various internal crises. A rights-based focus is also evident in the provisions of Protocol II that has replicated much of the fundamental rights guaranteed in the ICCPR. The benefits of the meshing of humanitarianism and human rights exceed the complexities that arise from it. As Junod (1984: 34) notes, “the existence of an “overlapping zone” of situations in which international humanitarian law and human rights are applicable simultaneously contributes to the reinforcement of protection because the means of implementation of the Protocol and Covenant are different.

Therefore the humanitarian protection provided through Protocol II, though limited in scope, was better because of the threads of human rights woven into it. One of the most important protections that not only replicates one provision of the Civilian Convention of 1949, but also extends it further is that which is provided in Article 17 – prohibition of forced movement of civilians. This was limited to protected persons or aliens²⁵⁵ as described in the first part of the 1949 Civilian Convention. In Protocol II this extends to all civilians and draws strength from the right to freedom of movement stipulated in the ICCPR.

From the Leiber Code to the laws of international humanitarianism, it is no longer just the protection of a person from the excesses of war, but also an extended embodiment of a person’s rights. Yet, deliberations on the human rights of the internally displaced – 1980s and 1990s – still concluded that IDPs

²⁵⁵ Article 4 of the General Provisions of the 1949 Convention (IV) Relative to the Protection of Civilian Persons in Time of War states that “Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which *they are not nationals.*” (emphasis in footnote added)

were not sufficiently, and specifically, protected (Cohen 1991). Interestingly, this case study also concluded from an analysis of the Principles itself that they do not draw from the protection granted through the Geneva Conventions and Additional Protocol II.

Out of 30 principles, only a handful are directly drawn or indirectly borrowed from the Geneva Conventions or Protocol II. Most principles are drawn from international human rights covenants and the Turku humanitarian standards. Two reasons would explain this: firstly the Principles were meant to address the gaps in the protection of the rights of IDPs, and secondly the restricted scope of application of the Geneva framework and its watered down provisions applicable in non-international armed conflicts, as discussed above, do not make it an appealing or natural cascading choice.

However, this creates two problems: Firstly, as the framing of the humanitarian response to internal displacement is human rights centric, a humanitarian response is still limited. And, having extracted the IDP category from the broad category of citizens who come under international humanitarian protection in non-international conflicts – Common Article 3 and Protocol II additional to the 1949 Geneva Conventions – the internally displaced may be put in a more complex crisis than before because of their special normative status.

The second problem goes back to ICRC and Switzerland's initial concern that a new set of norms on IDPs would undermine the power and authority of Additional Protocol II.²⁵⁶ Though a general hierarchy is created in the scope and introduction of the Principles, it does so without specifically calling on the Geneva Conventions or other existing humanitarian standards and practices. Not borrowing from Additional Protocol II or Common Article 3 more concretely in the Principles has, perhaps, eroded some of the power and legitimacy of

²⁵⁶ Confidential memo from Roberta Cohen to Francis Deng, Robert Goldman, Daniel Helle, Walter Kalin, Manfred Nowak and Maria Stavropoulou on *Next Steps in the Legal Process*, dated 20 June 1996, from the unarchived collection of the Brookings Institute.

those norms, in the case of IDPs at least, and highlighted its limitations and inadequacies once more. This is due to the identification of IDPs that are not limited to situations of armed conflicts, thus falling outside the purview of humanitarian laws. This is also due to the strategic approach of the drafters of the Principles that circumnavigated the thorny normative issue of sovereignty by reconstructing it as a responsibility of the state, but with no success, as the analysis in the sovereignty cluster revealed.

These findings make those from the last cluster on citizenship even more pertinent. This cluster was examined, as relevant to internal displacement, from the perspectives of nationality, statelessness and habitual residence. This research finds that in the early stages of the construct of nationality, the initial codification of international laws on nationality in the 1930s primarily focused on issues that caused complications between states with the objective of simplifying inter-state relations. The rights of an individual were not the priority.

This initial more brave intervention into internal matters of a state became more timid and less interfering in the years after the Second World War, where matters of nationality were limited to codification on that of identifying the state membership of a child. However, there was a more imposing tone in the international laws that addressed racial discrimination including based on nationality. This was less about the diminishing importance of interference in internal state affairs or sovereignty, and more about the then growing need for individual equality rooted in the fight against apartheid and the post-World War II emerging significance of human rights.

Further examination of this cluster on belonging through the prism of statelessness and habitual residence illuminates the reasons behind IDPs being left unprotected under the international framework though their state membership and habitual residence comes under question. This research demonstrates that clarifications on the concept of a refugee and stateless

persons left IDPs outside the international protection net. The conceptual and practical separation of refugee and stateless vis-à-vis definition and effective protection (Batchelor 1995) also excluded IDPs, letting them fall through the cracks of international protection.

As Barutciski (1998: 12) explains, “Being a victim of displacement is not the quality that has historically justified additional human rights protection for refugees. It is rather the quality of being a foreigner who has escaped persecution that is addressed by international refugee law...” Therefore using habitual residence as a parameter of conceptualization of IDPs stems from the history of its very exclusion. The research also explores the dynamics between the norm clusters extracting a better understanding of the norm ecosystem. The genealogical exploration of the three clusters demonstrated that internal displacement has not gone beyond the realm of domestic affairs, though it has gained increasing international attention and discursive space. The high internlinkages between the norm clusters also suggest more normative tension.

For instance, though norms of sovereignty dictate non-interference in the domestic affairs of another state, the practice was flouted to maintain one’s own sovereignty and internal peace in certain situations, such as when states did not want to grant asylum, and implemented containment or deterrence policies by creating safe havens in the country of origin in the name of humanitarianism. Tension is also evident between the structures that frame an individual and that of a state. For instance, without effective nationality, or even basic nationality, a person does have access to rights and entitlements. This leads to an interesting legal conundrum with the regard to the claimed primacy of human rights, especially the fundamentality of the right to freedom of movement and its significance to the realization of other rights including right to a nationality. But if one needs a nationality to exercise or even have access to other rights, then there is a legal lacuna in the understanding of human rights, which needs further examination and, perhaps, research.

8.5. Considerations for Future Research

This present research demonstrates that a richer and enhanced understanding of norm development is possible – one in which the processes and dynamics that characterize the complexity of the construction of social knowledge and reality are identifiable and observable. The strength and feasibility of the revised life cycle model is demonstrated through its successful application in three different case studies. It has been shown that not only are norms cascaded in a more intricate way and that the processes of cascading are not limited to state adherence, but also that an enhanced understanding allows for a deeper comprehension of internalization and state adherence and normative practice means at the domestic level. This present thesis also reveals the dynamics of international change and order within a norm life cycle. The examination and analysis presented in this research based on the questions: how do international norms cascade, and what are the normative underpinnings of the Guiding Principles pave the way for possible future theoretical and empirical studies.

From an empirical perspective, the critical unpacking of norm cascading before state acceptance and adherence opens the possibility for deeper inquiries into country case studies. For instance, as the case of Colombia in the Guiding Principles study demonstrates, the construction of the international IDP norms learned much from displacement dynamics in the South American country. Certain country cases studies may also shed more light on norm internalization and norm adherence, as demonstrated in the case of Somalia and its commitment to gender issues in the examination of UNSCR 1325. Meanwhile from a theoretical perspective, a deeper understanding of the process of norm development and cascading can be linked further to international policy development and the study of the mechanisms that enable the creation of policies and sustain them. This would complement the enhanced comprehension of change and order examined in this research.

BIBLIOGRAPHY

BOOKS & ARTICLES

Abbott, K.W., Keohane, R.O., Moravcsik, A., Slaughter, A.M. and Snidal, D. (2000) The concept of legalization. *International organization* 54(3), 401-419.

Adler, E. (1991) Cognitive evolution: a dynamic approach for the study of international relations and their progress, in Emanuel Adler and Beverly Crawford (eds.) *Progress in postwar international relations*. New York: Columbia University Press.

Adler, E. (1997) Seizing the middle ground: constructivism in world politics. *European journal of international relations* 3(3), 319–363.

Alvarez, J.E. (1997) Why nations behave. *Michigan journal of international law* 19, 303-317.

Anon (1997) The UNHCR note on international protection you wont see. *International journal of refugee law* 9, 267-268.

Arbodela, E. and Hoy, I. (1993) The convention refugee definition in the West: disharmony of interpretation and application. *International journal of refugee law* 5(1), 66-90.

Aronson, E. (2007) *The social animal*. 10th edition. New York: Worth.

Azar, E.E. (1990) *The management of protracted social conflict*. Hampshire: Dartmouth.

Baert, P. (2006) *Philosophy of the social sciences: towards pragmatism*. Cambridge: Polity Press.

Bagshaw, S. (2005) *Developing a normative framework for the protection of internally displaced persons*. New York: Transnational Publishers Inc.

Bailey, J. (2008), Arrested development: the fight to end commercial whaling as a case of failed norm change. *European journal of international relations* 14(2), 289-318.

Ballentine, K. and Sherman J. (2003) *The political economy of armed conflict: beyond greed and grievance*. London: Lynne Rienner Publishers.

Barkin, S.J. and Cronin, B. (1994) The state and the nation: changing norms and the rules of sovereignty in international relations. *International organization* 48(1), 107-130.

Barnes, J.A. (1977) *The ethics of inquiry in social science: three lectures*. Delhi and Oxford: OUP.

Barnett, M. (1999) Culture, strategy and foreign policy: Israel's road to Oslo. *European journal of international relations* 5(1), 5-36.

Barnett, M. (2011) *Empire of humanity: a history of humanitarianism*. Ithaca, New York: Cornell University Press.

Bartelson, J. (1995) *A genealogy of sovereignty*. Cambridge: Cambridge University Press.

Barrow, A. (2010) UN Security Council resolutions 1325 and 1820: constructing gender in armed conflict and international humanitarian law. *International review of the red cross* 92(887), 221-234.

Barutciski, M (1998) Tensions between the refugee concept and the IDP debate. *Forced migration review* 3, 11-14.

Batchelor, C. (1995) Stateless persons: some gaps in international protection. *International journal of refugee law* 7(2), 232-259.

Batchelor, C. (2005) The 1954 convention relating to the status of stateless persons: implementation within the European Union member states and recommendations for harmonization. *Refuge* 22(2), 31-58.

Battjes, H. (2002) A balance between fairness and efficiency? the directive on international protection and the Dublin regulation. *European journal of migration and law* 4(2), 159-192.

Bauböck, R. (2005) Changing meaning and practices of citizenship. *PS: political science and politics* 28(4), 667-669.

Becker, S. and Bryman, A. (2004) *Understanding research for social policy and practice: themes, methods and approaches*. Bristol: Policy.

Beetham, D. (1991) *The legitimation of power*. Basingstoke: Macmillan.

Berenskoetter, F. (2007) Thinking about power, in Felix Berenskoetter and M. J. Williams (eds.) *Power in world politics*. New York: Routledge. 1-22.

Berger, P.L. and Luckmann, T. (1996) *The social construction of reality: A treatise in the sociology of knowledge*. London and New York: Penguin Books.

Bernstorff, J. von (2008) The changing fortunes of the Universal Declaration of Human Rights: genesis and symbolic dimensions of the turn to rights in international law. *European journal of international law* 19(5), 903-924.

Bertrand, P. (1993) An operational approach to international refugee protection. *Cornell international law journal* 26(3), 495-504.

Betts, A. and Loescher, G. (2010) *Refugees in international relations*. Oxford: OUP.

Bhaskar, R. (1989) *Reclaiming reality: a critical introduction to contemporary philosophy*. London: Verso.

Biersteker, T.J. and Weber, C. (1996) (eds.) *State sovereignty as social construct*. Cambridge: Cambridge University Press.

Bjarnegård, E., and Melander, E. (2013) Revisiting representation: communism, women in politics, and the decline of armed conflict in East Asia. *International interactions* 39(4), 558–574.

Björkdahl, A. (2002) Norms in international relations: some conceptual and methodological reflections. *Cambridge review of international affairs* 15(1), 9-23.

Blau, P.M. (1963) Critical remarks on Weber's theory of authority. *The American political science review* 57(2), 305-316.

Boed, R. (1994) The state of the right of asylum in international law. *Duke journal of comparative and international law* 5(1), 1-34.

Bose, T. and Manchanda, R. (1997) *States, citizens and outsiders: the uprooted peoples of South Asia*. Kathmandu: SAFHR.

Bosniak, L. (2000) Citizenship denationalized. *Indiana journal of global legal studies* 7(2), 447-509.

Bothe, M., Ronzitti, N. and Rosas, A. (1998) *The new chemical weapons convention: implementation and prospects*. Boston, The Hague, London: Kluwer Law International.

Bozin-Odhiambo, D. (2012) Re-examining habitual residence as the sole connecting factor in Hague Convention child abduction cases. *Family law review* 3(1), 4-17.

Brandom, R. (1979) Freedom and constraint by norms. *American philosophical quarterly* 16(3), 187-196.

Bron  e, S.A. (1993) The history of the Comprehensive Plan of Action. *International journal of refugee law* 5(4), 534-543.

Brown, A.M. (2002) *Human rights and the borders of suffering: the promotion of human rights in international politics*. Manchester: Manchester University Press.

Brown, C. (2001), *Understanding international relations*. Basingstoke: Palgrave Macmillan.

Brun, C. (2003) *Finding a place: local integration and protracted displacement in Sri Lanka*. Trondheim: Norwegian University of Science and Technology (NTNU).

Bryden, A. (2013) *International law, politics and inhumane weapons: the effectiveness of global landmine regimes*. London and New York: Routledge.

Bryman, A. (2008) *Social research methods*. Oxford: OUP.

Buergenthal, T. (1997) The normative and institutional evolution of international human rights. *Human rights quarterly* 19, 703-723.

Bull, H. (2002) *The anarchical society: a study of order in world politics*. 3rd edition. Basingstoke and New York: Palgrave.

Bunch, C. (1990) Women's rights as human rights: toward a re-vision of human rights. *Human rights quarterly* 12(4), 486-498.

Burker, P. (2005) *History and social theory*. Cambridge: Polity Press.

Buzan, B. (1999) The English school as a research program: an overview, and a proposal for reconvening, *Paper for the Panel A Reconsideration of the English School: Close or Reconvene? BISA Conference, Manchester*, December 1999.

Buzan, B. (2001) The English School: an underexploited resource in IR. *Review of international studies* 27, 471-488.

Buzan, B. (2004) *From international to world society? English school theory and the social structure of globalization*. Cambridge: CUP.

Carr, E.H. (1964) *The twenty year's crisis 1919-1939*. London: Harper Perrenial.

Carlsnaes, W. (1992) The agency-structure problem in foreign policy analysis. *International studies quarterly* 36(3), 245-270.

Carrillo, A.C. (2009) Internal displacement in Colombia: humanitarian, economic and social consequences in urban settings and current challenges. *International review of the red cross* 91(875), 527-546.

Castles, S. (2003) The international politics of forced migration. *Development* 46(3), 11-20.

Cavers, D.F. (1972) Habitual residence: a useful concept? *American university law review* 21(3), 475-493.

Cepeda-Espinosa, M.J. (2006) How far may Colombia's Constitutional Court go to protect IDP rights? *Forced migration review: special issue 26 putting IDPs on the map: achievements and challenges*, 21-22.

Cepeda-Espinosa, M.J. (2009) The constitutional protection of IDPs in Colombia in Rodolfo Arango Rivadeneira (ed.) *Judicial protection of internally displaced persons: the Colombian experience*. Washington DC: The Brookings Institute. 1-48.

Chandler, D. (2001) The road to military humanitarianism: how the human rights NGOs shaped a new humanitarian agenda. *Human rights quarterly* 23(3), 678-700.

Charlesworth, H. (2005) Not waving but drowning: gender mainstreaming and human rights in the United Nations. *Harvard human rights journal* 18(1), 1-8.

Charlesworth, H. and Coicaud, J-M. (2010), *Fault lines of international legitimacy*. New York: Cambridge University Press.

Chatterjee, P. (2004) *The politics of the governed: reflections on popular politics in most of the world*. Delhi: Permanent Black.

Checkel, J.T. (1998) The constructivist turn in international relations theory. *World politics* 50(2), 324-348.

Chinkin, C. and Charlesworth, H. (2006) Building women into peace: the international legal framework. *Third world quarterly* 27(5), 937-957.

Clark, I. (2005) *Legitimacy in international society*. Oxford: Oxford University Press.

Clark, L. (1988) *Internal refugees: the hidden half*. Refugee policy group.

Clark, L. (1989) Internally displaced persons: framing the issue. Paper presented at the *Georgetown Symposium on Internally Displaced Persons*, 16-18 October 1989, Washington D.C.

Claude Jr., I. (1966) Collective legitimization as a political function of the United Nations. *International organization* 20(3), 367-379.

Coase, R.H. (1976) Adam Smith's view of man, *Selected papers No.50*, Graduate School of Business, University of Chicago.

Cohen, R. (1990) Human rights At the UN: internally displaced people need human rights protection. *In brief series* of the International League of Human Rights.

Cohen, R. (1991) *Human rights protection for internally displaced persons*. Paper prepared for RPG's conference on human rights protection for internally displaced persons. Washington DC, 24-25 June, 1991.

Cohen, R. and Cuénod, J. (1995) *Improving institutional arrangements for the internally displaced*. Washington DC: Brookings Institute and RPG.

Cohen, R and Deng, Francis (1998) *Masses in flight: the global crisis of internal displacement*. Washington D.C.: Brookings Institute Press.

Cohen, R. and Deng, F. (1998) *The forsaken people: case studies of the internally displaced*. Washington D.C.: The Brookings Institute.

Cohn, C. (2008), Mainstreaming gender in UN security policy: a path to political transformation? In Rai, S. and Waylen, G. (eds.) *Global governance: feminist perspectives*. Basingstoke: Palgrave Macmillan. 185-206.

Collier, A. (1994) *Critical realism: an introduction to Roy Bhaskar's philosophy*. London: Verso.

Conlon, P. (1995) Lessons from Iraq: the functions of the Iraq sanctions committee as a source of sanctions implementation, authority and practice. *Virginia journal of international law* 35, 633-668.

Costamagna, F. (2013) Statelessness in the context of state succession: an appraisal under international law, in Serena Forlati, Alessandra Annoni (eds.) *The changing role of nationality in international law*. Oxon and New York: Routledge.

Cullen, A. (2010) *The concept of non-international armed conflict in international humanitarian law*. Cambridge: Cambridge University Press.

Danermark, B. et al. (2002) *Explaining society: critical realism in the social sciences*. London and New York: Routledge.

Davey, E., Borton, J. and Foley, M. (2013) *A history of the humanitarian system: western origins and foundations*. HPG Working Paper Series.

Davis, L. and Engerman, S. (2003) Sanctions: neither war nor peace. *Journal of economic perspectives* 17(2), 187-197.

de Jonge Oudraat, C. (2013) UNSCR 1325: conundrums and opportunities. *International interactions* 39(4), 612-619.

Demusz, K. (2000) *Listening to the displaced: action research in the conflict zones of Sri Lanka*. Oxford: Oxfam.

Deng, F. (1995) Dealing with the displaced: a challenge to the international community. *Global Governance* 1(1), 45-57.

Deng, F.M. (2001) The Global challenge of internal displacement. *Journal of law and policy* 5, 141-155.

Deng, F.M., Kimaro, S., Lyons, T., Rothchild, D., and Zartmann, W.I. (1996) *Sovereignty as responsibility: conflict management in Africa*. Washington DC: Brookings Institute Press.

Desgrandchamps, ML. (2012) 'Organising the unpredictable': the Nigeria–Biafra War and its impact on the ICRC. *International review of the red cross* 94(888), 1409-1432.

Dessler, D. (1989) What's at stake in the agent-structure debate? *International organization* 43(3), 441-473.

Detter, I. (2013) *The law of war*. Surrey and Burlington: Ashgate.

Dickson, D. (1987) Chemical weapons pact edging closer. *Science, new series* 235(4795), 1452-1453.

Donnelly, J. (1998) *International human rights*. Boulder and Oxford: Westview Press.

Donnelly, J. (2003) *Universal human rights in theory and practice*. Ithaca and London: Cornell University Press.

Dray, W. (1964) *Philosophy of history*. Englewood Cliffs, N.J. and London: Prentice-Hall.

Dubash, N.K. (2009) Global norms through global deliberation? reflections on the World Commission on Dams. *Global governance* 15(2), 219-238.

Duffield, M. (2001) *Global governance and the new war: the merging of development and security*. London and New York: Zed Books.

Duncan, C.R. (2005) Unwelcome guests: relations between internally displaced persons and their hosts in North Sulawesi, Indonesia. *Journal of refugee studies* 18(1), 25-46.

Dunne, T. (2001) Sociological investigations: instrumental, legitimist and coercive interpretations of international society. *Millennium journal of international studies* 30, 67-91.

Dunne, T., Kurki, M. and Smith, S. (c2007) (eds.) *International relations theories: discipline and diversity*. Oxford: Oxford University Press.

Duque, F.G. (2009) The guiding principles on internal displacement: judicial incorporation and subsequent application in Colombia in Rodolfo Arango Rivadeneira (ed.) *Judicial protection of internally displaced persons: the Colombian experience*. Washington DC: The Brookings Institute.

Eggertsson, T. (2001) Norms in economics, with special reference to economics development in Michael Hechter and Karl-Dieter Opp (eds.) *Social norms*. New York: Russell Sage Foundation. 76-104.

Eisler, R. (1987) Human rights: toward an integrated theory for action. *Human rights quarterly* 9(3), 287-308.

Elder, D.E. (1979) The historical background of common article 3 of the Geneva Convention of 1949. *Case Western reserve journal of international law* 11(1), 37-69.

Ellerby, K. (2013) (En)gendered security? The complexities of women's inclusion in peace processes. *International interactions* 39(4), 435-460.

Elster, J. (1989) *The cement of society: a study of social order*. Cambridge: CUP.

Escobar, N.S. (2000) Colombia: a new century, an old war, and more internal displacement. *International journal of politics, culture, and society* 14(1), 107-127.

Evans, M. (2007) 'The suffering is too great': urban internally displaced persons in the Casamance conflict, Senegal. *Journal of refugee studies* 20(1), 60-85.

- Evans, T. (2005) International human rights law as power/knowledge. *Human rights quarterly* 27(3), 1046-1068.
- Falzon, C. (1998) *Foucault and social dialogue: beyond fragmentation*. London: Routledge.
- Fay, B. (1996) *Contemporary philosophy of social science: a multicultural approach*. Oxford: Blackwell.
- Feller, E. (2001) The evolution of the international refugee protection regime. *Journal of law and policy* 5(1), 129-139.
- Ferris, E.G. (1993) *Beyond borders: refugees, migrants and human rights in the post-Cold War era*. Geneva: WCC Publications.
- Fierke, K.M. (2001) Critical methodology and constructivism, in Karin M. Fierke and Knud Erik Jørgensen (eds.) *Constructing international relations: the next generation*. London and New York: M. E. Sharpe. 115-135.
- Fierke, K.M. (2007) Constructivism, in T. Dunne, M. Kurki and S. Smith (eds.) *international relations theories: discipline and diversity*. Oxford: Oxford University Press. 187-204.
- Finnemore, M. (1993) International organizations as teachers of norms: the United Nations educational, scientific, and cultural organization and science policy. *International organization* 47(4), 565-597.
- Finnemore, M. (1996) Constructing norms of humanitarian intervention in P.J. Katzenstein (ed.) *The culture of national security: norms and identity in world politics*. New York: Columbia University Press. 153-185.
- Finnemore, M. (1996) Norms, culture and world politics: insights from sociology's institutionalism. *International organization* 50(2), 325-347.
- Finnemore, M. and Sikkink, K. (1998) International norm dynamics and political change. *International organization* 52(4), 887-917.
- Finnemore, M. (2000) Are legal norms distinctive? *New York University journal of international law and politics* 32, 699-705.
- Finnemore, M. (2009) Legitimacy, hypocrisy, and the social structure of unipolarity. *World politics* 61(1), 58-85.
- Florini, A. (1996) The evolution of international norms. *International studies quarterly* 40(3), 363-389.

Flournoy, R.W. (1930) Nationality convention, protocols and recommendations adopted by the first conference on the codification of international law. *American journal of international law* 24(3), 467-485.

Forsythe, D.P. (2009) International humanitarianism in the contemporary world: forms and issues, in Edward Newman, Ramesh Thakur And John Tirman (eds.) *Multilateralism under challenge? Power, international order, and structural change*. Tokyo, New York and Paris: United Nations University Press. 234-258.

Foucault, M. (1972) *The archaeology of knowledge*. Translated by A.M. Sheridan Smith. London: Tavistock.

Foucault, M. (1977) *Discipline and punish: the birth of the prison*. Translated by Alan Sheridan. New York: Vintage Books.

Foucault, M. (1980) Nietzsche, genealogy, history in Donald Bouchard (ed.) *Language, counter-Memory, practice: selected essays and interviews by Michel Foucault*. Ithaca: Cornell University Press.

Foucault, M. (1990) *Politics, philosophy, culture: interviews and other writings, 1977-1984*. Translated by Alan Sheridan and others and edited with an introduction by Lawrence D. Kritzman. New York and London: Routledge.

Foucault, M. (1997) *Society must be defended: lectures at the College de France 1975-76*. Translated by David Macey. New York: Picador.

Foucault, M. (2002) *The order of things: an archaeology of the human sciences*. London: Routledge.

Franck, T.M. (1990) *The power of legitimacy among nations*. Oxford: OUP

Fraser, A.S. (1999) Becoming human: the origins and development of women's human rights. *Human rights quarterly* 21(4), 853-906.

Freeman, M. (2011) *Human rights. 2nd edition*. Cambridge and Malden: Polity Press.

Fullbrook, M. (2002) *Historical theory*. London: Routledge.

Gaarder, J. (1995) *Sophie's world: a novel about the history of philosophy*. London: Phoenix.

Galtung, J. (1975) *Human settlements: a theory, some strategies and some proposals*. Oslo: University of Oslo.

Galtung, J. (1978) *On the relationship between human rights and human needs*. Oslo: University of Oslo.

Galtung, J. (1994) *Human rights in another key*. Cambridge: Polity Press in association with Blackwell.

Gardam, J. (1992) A feminist analysis of certain aspects of international humanitarian law. *Australian yearbook of international law* 12, 265-278.

Gardam, J. (1997) Women and the law of armed conflict: why the silence? *International and comparative law quarterly* 46(1), 55-80.

Gardam, J. (2010) Women, human rights and international humanitarian law. *International review of the red cross* 38(324), 421-432.

Gardiner, A. (1922) The definition of the word and the sentence, British journal of psychology in C.K. Ogden and I.A. Richards (1923) (eds.) *The meaning of meaning: a study of the influence of language upon thought and the science of symbolism*. New York: Harcourt, Brace and World Inc.

George, J. (1989) International relations and the search for thinking space: another view of the third debate. *International studies quarterly* 33(3), 269-279.

Gibney, M. and Hansen, R. (2005) *Immigration and asylum from 1900 to the present*. Santa Barbara: ABC-CLIO.

Gibney, M. J. (2009) Statelessness and the right to citizenship. *Forced migration review* 32, 50-51.

Giddens, A. (1979) *Central problems in social theory: action, structure and contradiction in social analysis*. London: Macmillan.

Giddens, A. (1984) *The constitution of society: outline of the theory of structuration*. Cambridge: Polity Press.

Goertz, G. and Diehl, P.F. (1992) Toward a theory of international norms: some conceptual and measurement issues. *The journal of conflict resolution* 36(4), 634-664.

Goldstein, J. and Keohane, R. O. (1993) *Ideas and foreign policy: beliefs, institutions and political change*. Ithaca and London: Cornell University Press.

Goodland, R. (2010) Viewpoint: The World Bank Versus The World Commission on Dams. *Water alternatives* 3(2), 384-398.

Gordon, P. (1990) *Fortress Europe: the meaning of 1992*. London: Runnymede Trust.

Gordenker, L. (1987) *Refugees in international politics*. London: Croom Helm.

Goris, I., Harrington, J. and Köhn, S. (2009) Statelessness: what it means and why it matters. *Forced Migration Review* 32, 4-6.

Graham, D.E. (1975) The 1974 Diplomatic Conference on the law of war: a victory for political causes and a return to the "just war" concept of the eleventh century. *Washington and Lee law review* 32(1), 25-63.

Gross, L. (1948), The peace of Westphalia, 1648-1948. *American journal of international law* 42(1), 20-41.

Gruenberg, J. (2009) An analysis of United Nations Security Council Resolutions: are all countries treated equally? *Case Western reserve journal of international law* 41(2), 469-511.

Guzzini, S. (2000) A reconstruction of constructivism in international relations. *European journal of international relations* 6(2), 147-182.

Guzzini, S. (2005) The concept of power: a constructivist analysis. *Millennium: journal of international studies* 33(3), 495-521.

Hailbronner, K. (1993) The concept of 'safe country' and expeditious asylum procedures: a western European perspective, *International journal of refugee law* 5(1), 31-65.

Hanssen, B. (2000) *Critique of violence: between poststructuralism and critical theory*. London: Routledge.

Hasbullah, S.H. (2001) *Muslim refugees: The forgotten people in Sri Lanka's ethnic conflict*. Colombo: Research and Action Forum for Social Development.

Hathaway, J.C. (1991) Reconceiving refugee law as human rights protection. *Journal of refugee studies* 4(2), 113-131.

Hathaway, J.C. (1995) New directions to avoid hard problems: the distortion of the palliative role of refugee protection. *Journal of refugee studies* 8(288), 291-2.

Haugaard, M. (2002) *Parsons in Power: a reader*. Manchester and New York: Manchester University Press. 67-112.

Heater, D.B. (2004) *A brief history of citizenship*. New York: New York University Press.

Hechter, M. and Opp, K. D. (2001) (eds.) *Social norms*. New York: Russell Sage Foundation.

Helton, A.C. (1989) Asylum and refugee protection in Thailand. *International journal of refugee law* 1(1), 20-47.

Hill, F., Aboitiz, M. and Poehlman- Doumbouya, S. (2003) Nongovernmental organizations' role in the buildup and implementation of security council resolution 1325. *Signs* 28(4), 1255-1269.

Hobbes, T. (1962) *Leviathan: or the matter, form and power of a commonwealth ecclesiastical and civil*. New York: Simon and Schuster.

Hofferberth, M. and Weber, C. (2009) Lost in translation: constructivist norm research and its conceptual limits. *Paper presented at the 5th ECPR General Conference, Potsdam, 10-12 September 2009*.

Hollis, M. and Smith, S. (1990) *Explaining and understanding international relations*. Oxford, Clarendon Press.

Holmes, S. (1982) Two concepts of legitimacy: France after the revolution. *Political Theory* 10(2), 165-183.

Homans, G. C. (1951) *The human group*. London: Routledge and Kegan Paul Ltd.

Hopf, T. (1998) The promise of constructivism in international relations theory. *International security* 23(1), 171-200.

Hurd, I. (1999) Legitimacy and authority in international politics. *International organization* 53(2), 379-408.

Hurd, I. (2007) *After anarchy: legitimacy and power in the United Nations Security Council*. Princeton and Oxford: Princeton University Press.

Hurwitz, A. (1999) The 1990 Dublin Convention: a comprehensive assessment. *International journal of refugee law* 11(4), 646-677.

ICRC (1988) Internal disturbances and tensions: a new humanitarian approach? *International review of the red cross* 28(262), 3-8.

IDMC (2010) *Building momentum for land restoration: towards property restitution for IDPs in Colombia*

IDMC (2014) *Global overview 2014: people internally displaced by conflict and violence*

Jaeger, G. (2001) On the history of the international protection of refugees. *International review of the red cross* 83(843), 727-737.

Jefferson, C. (2014) Origins of the norms against chemical weapons. *International affairs* 90(3), 647-661.

Jonas, D.S. (2012) General and complete disarmament not just for nuclear state anymore. *Georgetown journal of international law* 43(3), 587-633.

Jones, J.M. (1956) The Nottebohm Case. *International and comparative law quarterly* 5(2), 230-244.

de Jonge Oudraat, C. (2013), UNSCR 1325: conundrums and opportunities. *International interactions* 39(4), 612-619.

Jonker, C. (2008) Protecting IDPs in Europe. *Forced migration review: ten years of the Guiding Principles on Internal Displacement*, pp.15-16

Jørgenson, M. and Phillips, L. (2002) *Discourse analysis as theory and method*. London and Thousand Oaks: Sage Publications.

Junod, S. (1984) Additional Protocol II: history and scope. *American university law review* 33(1), 29-40.

Juss, S. (2004) Free movement and the world order. *International journal of refugee law* 16(3), 289-335.

Kant, I. (1964) *The metaphysical principles of virtue*. Translated by James Ellington. Indianapolis and New York: The Bobbs-Merrill Company Inc.

Katzenstein, P.J. (1996) (ed.) *The culture of national security: norms and identity in world politics*. New York: Columbia University Press.

Keck, M.E. and Sikkink, K. (1998a) *Activists beyond borders: advocacy networks in international politics*. Ithaca: Cornell University.

Keely, C.B. (2011) The international refugee regime(s): the end of the Cold War matters. *International migration review* 35(1), 303-314.

Kellman, B. and Seward, B.L. (1994) Legal implementation of the Chemical Weapons Convention. *American society of international law* 88, 221-226.

Kelman, H.C. and Hamilton, V.L. (1989) *Crimes of obedience*. New Haven: Yale University Press.

Kelsen, H (1991) *General theory of norms*. Translated by Michael Hartney. Oxford: Clarendon Press.

Kenyon, I.R., Gutschmidt, K. and Cosivi, O. (2005) Legal aspects and international assistance related to the deliberate use of chemicals to cause harm. *Toxicology* 214, 249-255.

Khan, S.A. (1976) *Legal problems relating to refugees and displaced persons*. 149 Rdc 331.

Kharashvili, I., Kharashvili, I., and Subeliani, K. (2008) Experience of the guiding principles in Georgia. *Forced migration review: ten years of the Guiding Principles on Internal Displacement*, 16-17.

Kimmel, A.J. (1998) *Ethics and values in applied social research*. Newbury Park and London: Sage Publications.

Kjaerum, M. (1994) Temporary protection in Europe in the 1990s. *International journal of refugee law* 6(3), 444-456.

Klotz, A. and Lynch, C. (2007) *Strategies for research in constructivist international relations*. London and New York: M.E. Sharpe.

Korff, S.A. (1924) An introduction to the history of international law. *American journal of international law* 18(2), 246-247.

Korsgaard, C. (1996) *The sources of normativity*. Cambridge: CUP.

Kortian, G. (1980) *Metacritique: the philosophical argument of Jürgen Habermas*. Translated by John Raffan with an introductory essay by Charles Taylor and Alan Montefiore. Cambridge: CUP.

Koslowski, R. and Kratochwil, F. (1994) Understanding change in international politics: the Soviet empire's demise and the international system. *International organization* 48(2), 215-247.

Kowert, P. and Legro, J. (1996) Norms, identity and their limits: a theoretical reprise, in Katzenstein, P.J. (ed.) *The culture of national security: norms and identity in world politics*. New York: Columbia University Press. 451-497.

Krachotwil, F.V. (1984) Thrasymachos revisited: on the relevance of norms and the study of laws in international relations, *Journal of international affairs* 37(2), 343-356

Krachotwil, F.V. (1989) *Rules, norms and decisions: on the conditions of practical and legal reasoning in international relations and domestic affairs*. Cambridge: CUP.

Krill, F. (1985) The protection of women in international humanitarian law. *International review of the red cross* 25(249), 337-363.

Krutzsch, W., Myjer, E., and Trapp, R. (2014) *The Chemical Weapons Convention: a commentary*. Oxford: OUP.

Kuehnast, K., de Jonge Oudraat, C. and Hernes, H. (2011) *Women and war: power and protection in the 21st century*. Washington, DC: USIP Press.

Laclau, E. and Mouffe, C. (2001) *Hegemony and socialist strategy: towards a radical democratic politics*. Translated by Winston Moore and Paul Cammack. London: Verso.

Legro, J.W. (1997) Which norms matter? Revisiting the “failure” of internationalism. *International organization* 51(1), 31-63.

Lessig, L. (1995) The regulation of social meaning. *University of Chicago law review*, 62(3), 944-1045.

Linklater, A. (1998) *The transformation of political community: ethical foundations of the post-Westphalian era*. Oxford: Polity.

Loescher, G. (1989) *Refugees and international relations*. Oxford: OUP.

Macalister-Smith, P. (1985) *International humanitarian assistance: disaster relief actions in international law and organization*. Leiden and Boston: Nijhoff.

Maghroori, R. (1982) Introduction: major debates in international relations in R. Maghroori and B. Ramberg (eds.) *Globalism vs. realism: international relations' third debate*. Boulder: Westview Press.

Majchrzak, A. (1984) *Methods of policy research*. Beverley Hills and London: Sage.

Malkki, L. (1992) The rooting of peoples and the territorialization of national identity among scholars and refugees. *Cultural anthropology* 7(1), 24-44.

Manners, I. (2002) Normative power Europe: a contradiction in terms? *Journal of common market studies* 40(2), 235-258.

Martin, D.A. (1982) Large-scale migrations of asylum seekers. *American journal of international law* 76(3), 589-609.

McAdams, R. (1997) The origin, development, and regulation of norms. *Michigan law review* 96(2), 338-433.

McAdam, J. (2011) An intellectual history of freedom of movement in international law: the right to leave as a personal liberty. *Melbourne journal of international law* 12(1), 27-56.

McCormack, T.L.H. (1991) International law and the use of chemical weapons in the Gulf War. *California Western international law journal* 21(1), 1-30.

McNamara, D. (1990) The origins and effects of 'humane deterrence' policies in South-east Asia, in Loescher, G. and Monahan, L. (eds.) *Refugees and international relations*. Oxford: Clarendon Press, pp.123-133.

Mehta, L. and Napier-Moore, R. (2010) Citizenship and displacement. *IDS Working Paper* 354, 18-21.

Meier, O. and Hunger, I. (2014) *Between control and cooperation: dual-use, technology transfers and the non-proliferation of weapons of mass destruction*. Osnabrück: Deutsche Stiftung Friedensforschung.

Meron, T. (1983) On the inadequate reach of humanitarian and human rights law and the need for a new instrument. *American journal of international law* 77(3), 589-606.

Morgenstern, F. (1949) The right of asylum. *British yearbook of international law* 26, 327-357.

Muggah, R. (2000) Through the developmentalist's looking glass: conflict-induced displacement and involuntary resettlement in Colombia. *Journal of refugee studies* 13(2), 133-164.

Munz, R. and Weiner, M. (1997) (eds.) *Migrants, refugees and foreign policy: US and German policies towards countries of origin volume 2*. Oxford: Bergahn Books.

Naraghi-Anderlini, S. (2000) *The A-B-C to UN Security Council Resolution 1325 on women and peace and security*, report. Ecumenical Women 2000+, New York, http://www.ew2000plus.org/un_womenpeace_res1325essay.htm

Nayar, M.G.K. (1972) The right of asylum in international law: its status and prospects. *St. Louis university law journal* 17(1), 17-46.

Nealon, J. T. (2008) *Foucault beyond Foucault: power and its intensifications since 1984*. California: Stanford University Press.

Nelson, R. and Sampat, B. (2001) Making sense of institutions as a factor shaping economic performance. *Journal of economic behaviour and organization* 44, 31-54.

Newland, K., Patrick, E., Zard, M., and OCHA (2003) *No refuge: the challenge of internal displacement*. United Nations

Newman, E., Paris, R., and Richmond, O.P. (2009) (eds.) *New perspectives on liberal peacebuilding*. New York: United Nations University Press.

Nietzsche, F. (1887, 1913) *The genealogy of morals*. Translated by H.B. Samuel (1913). New York: Dover Thrift Editions.

Norwegian Refugee Council (1999) *Global IDP database: internally displaced persons in Colombia*.

Nye Jr., J.S. (2004) *Soft power: the means to success in world politics*. New York: Public Affairs.

Ogden, C.K. and Richards, I.A. (1923) (eds.) *The meaning of meaning: a study of the influence of language upon thought and the science of symbolism*. New York: Harcourt, Brace and World Inc.

Olujic, M.B. (1998) Embodiment of terror: gendered violence in peacetime and wartime in Croatia and Bosnia-Herzegovina. *Medical anthropology quarterly* 1(12), 31-50.

Onuf, N.G. (1989), *World of our making*. Columbia: University of South Carolina Press.

Onuf, N.G. (1998) Constructivism: a user's manual, in V. Kubalkova, N. Onuf and P. Kowert (eds.), *International relations in a constructed world*. New York and London: M.E. Sharpe. 62-63.

Onuf, N.G. (2013) *Making sense, making worlds: constructivism in social theory and international relations*. New York, Oxon: Routledge.

Orchard, P. (2015) Refugees and internally displaced persons in Roger Mac Ginty and Jenny H Peterson (eds.) *The routledge companion to humanitarian action*. London and New York: Routledge. 298-309.

Osiander, A. (2001) Sovereignty, international relations, and the Westphalian myth. *International organization* 55(2), 251-287.

Otto, D. (2010) The Security Council's alliance of gender legitimacy: the symbolic capital of resolution 1325, in Hilary Charlesworth and Jean-Marc Coicaud (eds.) *Fault lines of international legitimacy*. Cambridge: Cambridge University Press. 239–76.

Paris, R. (2010) Saving liberal peacebuilding. *Review of international studies*, 36(2), 337-365.

Parsons, T. (1966) *Societies: evolutionary and comparative perspectives*. New Jersey: Prentice-Hall Inc.

Parsons, T. (1968) *Sociological theory and modern society*. New York: Free Press.

Pasquier, A. (2001) Constructing legitimacy, paper presented at the *seminar on politics and humanitarian aid: debates, dilemmas and dissension*. Commonwealth Institute, London, 1 February 2001.

Paton, H.J. (1947) *The categorical imperative: a study in Kant's moral philosophy*. London: Hutchinson and Co. (Publishers) Ltd.

Pattaro (2000a) Language and behaviour: an introduction to the normative dimension, in W. Krawietz et al. (eds.) *The reasonable as rational? On legal argumentation and justification*. Berlin: Duncker & Humblot. 251-272.

Paul, T.V. and Hall, J.A. (eds.) (1999) *International order and the future of world politics*. Cambridge: CUP.

Payne, R.A. (2001) Persuasion, frames and norm construction. *European journal of international relations* 7(1), 37-61.

Pecaut, D. (2000) The loss of rights, the meaning of experience, and social connection: a consideration of the internally displaced in Colombia. *International journal of politics, culture and society* 14(1), 89-106.

Perry, M. J. (2000) What is morality anyway? *Villanova law review* 45, 69-106.

Petrasek, D. (1998) Moving forward on the development of minimum humanitarian standards. *American journal of international law* 92(3), 557-563.

Phillips, J. and Spinks, H. (2013) Boat arrivals in Australia since 1976. *Social policy research paper*. Department of Parliamentary Services, Government of Australia.

Phuong, C. (2004) *The international protection of internally displaced persons*. Cambridge: CUP.

Plato, (1894, 2000) *The republic*. Translated by Benjamin Jowett. Mineola, New York: Dover Publications Inc.

Plender, R. (1994) The legal basis of international jurisdiction to act with regard to the internally displaced. *International journal of refugee law* 6(3), 345-361.

Pratt, N. and Richter-Devroe, S. (2011) Critically examining UNSCR 1325 on women, peace and security. *International feminist journal of politics* 13(4), 489-503.

Price, M.E. (2005) Politics and humanitarianism? Recovering the political roots of asylum. *Georgetown immigration law journal* 19(2), 277-311.

Price, R. (1995) A genealogy of the chemical weapons taboo. *International Organization* 49(1), 73-103.

Price, R. (1997) *Chemical weapons taboo*. Ithaca: Cornell University Press.

Price, R. and Reus-Smit, C. (1998) Dangerous liaisons? Critical international relations and constructivism. *European journal of international relations* 4(3), 259-294.

Pufendorf, S. von (1729) *On the law of nature and nations*. London: printed for J. Walthoe, R. Wilkin, J. and J. Bonwicke, S. Birt, T. Ward, and T. Osborne.

Rabinbach, A. (2005) Raphael Lemkin's concept of genocide: fifty years later, the first conviction was handed down. *International politics: transatlantic edition*, 70-75.

Rajanayagam, D.H. (1994) *The Tamil tigers: armed struggle for identity*. Stuttgart: Steiner

Rawls, J. (1955) Two concepts of rules. *The philosophical review* 64(1), 3-33.

Raymond, G. (1997) Problems and prospects in the study of international norms. *Mershon international studies review* 41(2), 205-245.

Reeves, J.S. (1930) The Hague Conference on the codification of international law. *American journal of international law* 24(1), 52-57.

Risse, T., Ropp, S.C. and Sikkink, K. (1999) *The power of human rights: international norms and domestic change*. Cambridge: Cambridge University Press.

Roberts, A. (1998) More refugees, less asylum: a regime in transformation. *Journal of refugee studies* 11(4), 375-395.

Roberts, B. (2006) *Micro social theory*. Basingstoke: Palgrave Macmillan.

Robinson, J.P.P. (1996) Implementing the chemical weapons convention. *International affairs* 72(1), 73-89.

Robinson, J.P.P. (1998) The negotiations on the chemical weapons convention: a historical overview, in Michael Bothe et al. (eds.) *The new chemical weapons convention: implementation and prospects*. The Hague, London and Boston: Kluwer Law International.

Robinson, J.P.P. (2008) Difficulties facing the chemical weapons convention. *International affairs* 84(2), 223-239.

Rodriguez-Garavito, C. and Rodriguez-Franco, D. (2015) *Radical deprivation on trial: the impact of judicial activism on socioeconomic rights in the global south*. Cambridge: Cambridge University Press.

Rogers, R. (1992) The future of refugee flows and policies. *International migration review* 26(4), 1112-1143.

Rokeach, M. (1979) *Understanding human values*. New York: Free Press.

Rothgeb Jr., J.M. (1993) *Defining power: influence and force in the contemporary international system*. New York: St Martin's Press.

Rousseau, J.J. (1968) *The social contract*. Translated and introduced by Maurice Cranston. Harmondsworth: Penguin Books.

Rubenstein, K., and Adler, D. (2000) International citizenship: the future of nationality in a globalized world. *Indiana journal of global legal studies* 7(2), 519-548.

Ruggie, J.G. (1998) What makes the world hang together? Neo-utilitarianism and the social constructivist challenge. *International organization* 52(4), 855-885.

Rydell, R. (2010) Nuclear disarmament and general and complete disarmament in David Krieger (ed.) *The challenge of abolishing nuclear weapons*. New Brunswick and London: Transaction Publisher.

Sandholtz, W. (2008) Explaining international norm change in Wayne Sandholtz and Kendall Stiles (eds.) *International norms and cycles of change*. Oxford: Oxford University Press.

Schindler, D. and Toman, J. (1988) *The laws of armed conflicts: a collection of convention, resolutions and other documents*. Leiden and Boston: Martinus Nijhoff Publisher.

Schüller, A. (2010) Fundamental standards of humanity – still a useful attempt or an expired concept? *The international journal of human rights* 14(5), 744-770.

Searle, J.R. (1995) *The construction of social reality*, New York: The Free Press.

Shepherd L.J. (2011) Sex, security and superhero(in)es: from 1325 to 1820 and beyond. *International feminist journal of politics* 13(4), 504-521.

Shiva, S. (2000) *Hush, don't say anything to God: passionate poems by Rumi*. California: Jain Publishing Company.

Simons, M. (2002) The emergence of a norm against arbitrary forced relocation. *Columbia human rights law review* 34(1), 95-156.

Simpson, J.H. (1938) The refugee problem. *International affairs* 17(4), 607-628.

Skard, T. (2008) Getting our history right: how were the equal rights of women and men included in the Charter of the United Nations? *Forum for development studies* 35(1), 37-60.

Smart, B. (1983) *Foucault, Marxism and critique*. London: Routledge & Kegan Paul.

Smith, A. (1976) *The theory of moral sentiments*. edited by D.D. Raphael and A.L. Macfie. Oxford: Clarendon Press.

Snow, D.A., Rochford Jr. E.B., Worden S.K. and Benford, R.D. (1986) Frame alignment processes, micromobilization, and movement participation. *American sociological review* 51(4), 464-481.

Sollis, P. (1994) The relief-development continuum: some notes on rethinking assistance for civilian victims of conflict. *Journal of international affairs* 47(2), 451-471.

Stanton, E.C., (1892) *The solitude of self*, <http://historymatters.gmu.edu/d/5315/>

Stavropoulou, M. (1998) Displacement and human rights: reflections on UN practice. *Human rights quarterly* 20(3), 515-554.

Stein, B.N. (1981) The refugee experience: defining the parameter of the field study. *International migration review* 15, 320-330.

Steiner, H.J. and Aston, P. (2000) *International human rights in context: law, politics, morals*. Oxford and New York: OUP.

Stepputat, F. (1994) Repatriation and the politics of space: the case of the Mayan diaspora and return movement. *Journal of refugee studies*, 7(No.2/3).

Stepputat, F. and N. Sorensen (2001) The rise and fall of 'internally displaced people' in the Central Peruvian Andes. *Development and change* 32, 769-791.

Sterling-Folker, J. (2006) *Making sense of international relations theory*. London: Lynne Rienner Publishers.

Stirk, C. (2013) *Colombia: resources for humanitarian response and poverty reduction*. Global Humanitarian Assistance.

Stone, P. (2000) The concept of habitual residence in private international law. *Anglo-American law review* 29(3), 342-367.

Summers, N. (2012) Colombia's victims' law: transitional justice in a time of violent conflict? *Harvard human rights journal* 25(1), 219-235.

Sunstein, C.R. (1996) Social norms and social roles. *Columbia Law Review* 96(4), 903-968.

Tharakan, S. (2002) *The nowhere people: responses to internally displaced persons*. Bangalore: Ecumenical Christian Centre.

Thompson, M. R. (2000) *Philosophy*. London: Hodder & Stoughton.

Thomson, J.E. (1993) Norms in international relations: a conceptual analysis. *International journal of group tensions* 23, 67-83.

Tilly, C. (1995) Citizenship, identity and social history. *International review of social history* 40, 1-17.

Tiso, C.M. (1994) Safe haven refugee programs: a method of combating international refugee crises. *Georgetown immigration law journal* 8(4), 575-601.

Tschirgi, N. (2004) Post-conflict peacebuilding revisited: achievements, limitations and challenges. Prepared for the *WSP International IPA Peacebuilding Forum Conference*. New York, 7 October 2004.

Tucker, J.B. (2001) (ed.) *The chemical weapons convention: implementation challenges and solutions*. Washington D.C.: Monterey Institute of International Studies.

Turner, S. (2010) *Explaining the normative*. Cambridge and Malden: Polity Press.

Tyler, T. R. (2006) Psychological perspectives on legitimacy and legitimation. *Annual review of psychology* 57, 375-400.

Van Hear, N. and McDowell, C. (2006) (eds.) *Catching fire: containing forced migration in a volatile world*. Lanham, Md.: Lexington.

Viana, M.T. (2009) International cooperation and internal displacement in Colombia: facing challenges of the largest humanitarian crisis in South America. *International journal of human rights* 6(10), 133-152.

Vincent, M et al. (2001) *Caught between borders: response strategies of the Internally Displaced*. Pluto Press.

Weber, M. (1956, 1964) *Economy and society*. Edited by Guenther Roth and Claus Wittich. Berkeley and Los Angeles: University of California Press.

Weber, M. (1968) *Economy and society: an outline of interpretive sociology*. Berkeley and Los Angeles: University of California.

Weber, M. (1971) *The interpretation of social reality*. Edited by J.E.T. Eldridge (1971). London: Michael Joseph.

Weis, P. (1956) *Nationality and statelessness in international law*. London: Steven and Sons Ltd.

Weis, P. (1969) The United Nations declaration on territorial asylum. *Canadian yearbook of international law* 7, 92-149.

Weiss, T.G. and Korn, D.A. (2006) *Internal displacement: conceptualization and its consequences*. London and New York: Routledge.

Wendt, A. (1987) Agent-structure problem in international relations theory. *International organization* 41(3), 335-370.

Wendt, A. (1991) Review: bridging the theory/meta-theory gap in international relations. *Review of international studies* 17(4), 383-392.

Wendt, A. (1992) Anarchy is what states make of it: the social construction of power politics. *International organization* 46(2), 391-425.

Wendt, A. (1994) Collective identity formation and the international state, *The American political science review* 88(2), 384-396.

Wendt, A. (1995) Constructing international politics. *International security* 20(1), 71-81.

Wendt, A. (1999) *Social theory of international politics*. Cambridge: Cambridge University Press.

Wheeler, N.J. (2000) *Saving strangers: humanitarian intervention in international society*, Oxford: OUP.

Whitaker, B. (1983) *A bridge of people: a personal view of Oxfam's first forty years*. London: Heinemann.

Whitman, J. (2010) Freeing force from legal constraint, in Sarah Perrigo and Jim Whitman (eds.), *The Geneva Conventions under assault*. London and New York: Pluto Press. 201-221.

Williams, R. (2008) *Protecting internally displaced persons: a manual for law and policymakers*. Washington DC: Brookings Institute.

Zehfuss, M. (2002) *Constructivism in international relations: the politics of reality*. Cambridge: Cambridge University Press.

Zelditch, M. Jr. (2001) Theories of legitimacy, in John Jost and Brenda Major (eds.) *The psychology of legitimacy: emerging perspectives on ideology, justice, and intergroup relations*. Cambridge: CUP.

Zelditch, M. Jr. (2001) Processes of legitimation: recent developments and new directions. *Social psychology quarterly* 64, 4-17.

REPORTS, TREATIES and OTHER OFFICIAL DOCUMENTS

Amnesty International (1994) *Political violence in Colombia: myth and reality*, AMR 23/001/1994

An Agenda for Peace, adopted by resolution of the UN General Assembly on 8 October 1993, A/RES/47/120B

Analytical report of Secretary General on Internally Displaced Persons prepared for the UN Commission on Human Rights 14 February 1992 E/CN.4/1992/23

Amnesty International (1990) Europe: harmonisation of asylum policy briefing paper EUR/01/90, London: Amnesty International

BBC 1969: Nigeria Bans Red Cross Aid to Biafra, available online: http://news.bbc.co.uk/onthisday/hi/dates/stories/june/30/newsid_3733000/3733321.stm

Cartagena Declaration on Refugees adopted at the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena, Colombia, 19-22 November 1984

Charter of the United Nations, adopted on 24 October 1945, 1 UNTS XVI

Cohen (1990) *UN human rights bodies should deal with the internally displaced*, Statement before the delegates of the UN Commission on Human Rights organized by the Quaker UN Office and World Council of Churches on 7 February 1990

Cohen, R. (1991) Human rights protection for internally displaced persons, Paper prepared for RPG's *Conference on Human Rights Protection for Internally Displaced Persons*, Washington DC, 24-25 June, 1991

Colombian Constitutional Court Decision T-025/04, 22 January 2004

Commission on Human Rights resolution on Internally Displaced Persons 1992/73, adopted on 5 March 1992

Commission on Human Rights, Comprehensive Study of the Representative of the Secretary-General on the Human Rights Issues related to Internally Displaced Persons, E/CN.4/1993/35 (1993)

Commission on Human Rights resolution on Internally Displaced Persons, adopted on 11 March 1993, E/CN.4/RES/1993/95

Commission on Human Rights resolution on Internally Displaced Persons, adopted on 19 April 1996, E/CN.4/RES/1996/52

Commission on Human Rights resolution on Internally Displaced Persons, adopted on 17 April 1998, E/CN.4/RES/1998/50

Commission on Human Rights resolution on Internally Displaced Persons, adopted on 27 April 1999, E/CN.4/RES/1999/47

Communication from the Director General of the International Refugee Organization to the Sixth Session of the Commission on Human Rights, 30 March 1950, E/CN.4/392

Compilation and Analysis of Legal Norms, Part II: Legal Aspects Relating to the Protection against Arbitrary Displacement, E/CN.4/1998/53/Add.1

Comprehensive Study prepared by Mr. Francis M. Deng, Representative of the Secretary General on the Human Rights related to Internally Displaced Persons, pursuant to Commission on Human Rights resolution 1992/73, E/CN.4/1993/35 (1993)

Convention (VIII) Relative to the Laying of Automatic Submarine Contact Mines, adopted at The Hague on 18 October 1907

Convention on Certain Questions Relating to the Conflict of Nationality Laws, adopted on 13 April 1930 by the League of Nations, Treaty Series, vol. 179, p. 89

Convention Concerning the Status of Refugee Coming from Germany, adopted by the League of Nations on 10 February 1938, League of Nations Treaty Series, Vol. CXCI, No. 4461, page 59

Convention Relating to the Status of Refugees, adopted on 28 July 1951, UNTS, Vol. 189

Convention on the Prohibition, Development, Production, Stockpiling and Use of Chemical Weapons and on Their Use, 13 January 1993, 1974 UNTS 45

Declaration Renouncing the Use, in Time of War, of Explosive Projectiles, adopted at St. Petersburg, on 29 November / 11 December 1868

Declaration (IV, 2) Concerning Asphyxiating Gases, adopted at The Hague on 29 July 1899

Declaration (IV, 3) Concerning Expanding Bullets, adopted at The Hague, on 29 July 1899

Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960, UNGA Res 1514 (XV)

Declaration on Territorial Asylum, adopted on 14 December 1967, A/RES/2312(XXII)

Declaration and Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons, 30 May 1989, CIREFCA 89/13/Rev.1

Declaration on Minimum Humanitarian Standards, adopted by an expert meeting at the Institute of Human Rights, Abo Akademi University, Turku/Abo, Finland, 30 November – 2 December, 1990

Final Report on The Right of Everyone to Leave Any Country, Including His Own, And to Return to His Country, submitted by the Sub-commission on Prevention of Discrimination and Protection of Minorities, at the 40th Session of the Commission on Human Rights, 20 June 1988, E/CN.4/Sub.2/1988/35

Final Record of the Diplomatic Conference of Geneva of 1949, Volume II Section B

Final Statement of Experts from the Legal Round Table on Internally Displaced Persons, on 1-2 October 1994 in Vienna, Austria

Final Verbatim Reports of the ENCD Conferences between 1962 and 1969: <http://quod.lib.umich.edu/e/endc?cginame=text-idx;id=navbarbrowselink;page=browse>

Global Centre for R2P (regularly updated), *Populations at Risk: Syria*, <http://www.globalr2p.org/regions/syria>

Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, adopted on 18 October 1907

Hague Convention (II) on the Laws and Customs on the War on Land, adopted on 29 July 1899

ICHI (1986), *Seeking Sanctuary: Displaced People within Developing Countries*, in Independent Commission on International Humanitarian Issues (ed.) *Refugees: The Dynamics of Displacement: A Report for the Independent Commission on International Humanitarian Issues*, London: Zed Books, pp.115-129

ICISS (2001), *The Responsibility to Protect*, Ottawa: International Development Research Centre

ICRC, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287

IDMC (regularly updated), Sri Lanka: Country Profile, *Internal Displacement Monitoring Centre*, <http://www.internal-displacement.org/south-and-south-east-asia/sri-lanka/>

IDMC (2013), *Sri Lanka: Internal Displacement in Brief*, as of December 2013

International Court of Justice, Reports of Judgments, Advisory Opinions and Orders, *Nottenbohm Case* (Liechtenstein vs. Guatemala) Second Phase, Judgment of 6 April 1955

IRIN (2013) Sri Lanka's Muslim IDPs 25 Years On, *Irin: The Inside Story on Emergencies*, <http://www.irinnews.org/report/97297/briefing-sri-lanka-s-muslim-idps-25-years-on>, 21 January 2013

Joint Communiqué of The Twelfth ASEAN Ministerial Meeting Bali, 28-30 June 1979

Kleppe, T.T. and UN-INSTRAW (2008), *Women, Peace and Security in Somalia: Implementation of UN Security Council Resolution 1325 A UN-INSTRAW Background Paper*, available online: http://www.peacewomen.org/sites/default/files/1325_sm_2008_0.pdf

Laws of War on Land, Oxford, adopted on 9 September 1880

Law 387 of 1997, Diario Oficial [Official Gazette] No. 43,091 of 24 July 1997

League of Nations, Covenant of the League of Nations, 28 April 1924, Article 8, available online at the Yale Avalon Project: http://avalon.law.yale.edu/20th_century/leagcov.asp

Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable to Armed Conflict 1974-1977

Official Records of the 22nd Session of the UN General Assembly, A/6912

OHCHR, Factsheet No.2 (Rev.1) on the International Bill Human Rights, available online: <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

OHCHR (2014), *Press Conference Statement by United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein*, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15173&LangID=E>

Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, adopted on 10 September 1969, 1001 UNTS 45

Organization of African Unity resolution CM/939 (XL) on the Situation of Refugees in Africa, adopted on 5 March 1984

Organization of African Unity resolution CM/1040 (XLIV) on the Situation of Refugees in Africa, 26 July 1986

Oslo Declaration and Plan of Action on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa, Doc. 88/5, 24 August 1988

Permanent Court of International Justice (1923) *Advisory Opinion Series B No.4, Nationality Decrees Issued in Tunis and Morocco* on 7 February 1923

Preliminary Report of the ILA Committee on Internally Displaced Persons submitted by Rainer Hofmann at the 66th Conference of the International Law Association, 14-20 August 1994, Buenos Aires, Argentina

President Woodrow Wilson, Address to Joint Session of Congress on the Conditions of Peace (Fourteen Points Address) on 8 January 1918, available online at the Yale Avalon Project: http://avalon.law.yale.edu/20th_century/wilson14.asp

Profiles in Displacement: Colombia, Report of the Representative of the Secretary-General, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 1993/95 to the 51st session of the Commission on Human Rights on 3 October 1994, E/CN.4/1995/50/Add.1

Profiles in Displacement: Follow-up Mission to Colombia, Report of the Representative of the Secretary-General on internally displaced persons, submitted in accordance with Commission resolution 1999/47 at the 55th session of the Commission on Human Rights, on 11 January 2000, E/CN.4/2000/83/Add.1

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), adopted on 8 June 1977, 1125 UNTS 609

Refugee Policy Group (1992) *Human Rights and Humanitarian Emergencies: New Role for U.N. Human Rights Bodies*: Washington DC: RPG

Report of the World Conference of the International Women's Year, Mexico City 19 June-2 July 1975, E/CONF.66/34

Report of the World Conference of the United Nations Decade for Women: Equality Development and Peace, Copenhagen 14-30 July 1980, A/CONF.94/35

Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, 15-22 July 1985, A/CONF.116/28/Rev.1

Report of the Representative of the Secretary General, Mr. Francis M. Deng, submitted pursuant to the Commission of Human Rights resolution 1995/57, *Compilation and Analysis of Legal Norms*, E/CN.4/1996/52/Add.2

Report by the United Nations High Commissioner for Human Rights at the 54th session of the Commission of Human Rights, on 9 March 1998, E/CN.4/1998/16

Report and Draft Declaration for consideration at the 2000 Conference of the International Law Association Committee on Internally Displaced Persons

Resolution XXIII Human Rights in Armed Conflicts, Final Act of the International Conference on Human Rights, Tehran 22 April – 13 May, 1968, A/CONF.32/41

Statement attributable to the Spokesperson of the Secretary-General on Myanmar elections, 8 November 2010, <http://www.un.org/sg/statements/?nid=4911>

Temporary Protection, Summary and Recommendations from the Report of the Inter-Ministerial Working Group, Norway, April 1993, *International Journal of Refugee Law* 5(3), 477-490

Treaty on the Non-proliferation of Nuclear Weapons, adopted on 1 July 1968, 729 UNTS 161

UN Commission on Human Rights, Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories: situation of human rights in Guatemala, 8 March 1983, E/CN.4/RES/1983/37

UN Commission on Human Rights, Situation of human rights in El Salvador, 10 March 1988, E/CN.4/RES/1988/65

UN Commission on Human Rights resolution on Internally Displaced Persons 1992/73, adopted on 5 March 1992

UN Commission on Human Rights, Question of human rights and fundamental freedoms in Afghanistan, 10 March 1988, E/CN.4/RES/1988/67

UN Doc A/AC.96/930, 965, 975 (7 Jul 2000, 11 Sept 2002, 2 Jul 2003)

UNDP Somalia, *Gender Equality and Women's Empowerment Strategy 2011-2015*, available online:
http://www.undp.org/content/dam/undp/documents/projects/SOM/00060507_Gender%20Strategy%20for%20Somalia%20Final.pdf

UN General Assembly, *Draft Declaration on the Elimination of Discrimination against Women*, 5 December 1963, 1921 (XVIII)

UN General Assembly Resolution on *Universal Declaration of Human Rights*, adopted on 10 December 1948, 217A (III)

UN General Assembly Resolution on Respect for Human Rights in Armed Conflicts, 2444 (XXIII) adopted on 19 December 1968

UN General Assembly *Resolution on Assistance to Sudanese Refugees Returning from Abroad*, adopted on 12 December 1972, 2958 (XXVII)

UN General Assembly Resolution on *International Cooperation to Avert New Flows of Refugees*, adopted on 11 December 1980, A/RES/35/124

UN General Assembly Resolution on *International Cooperation to Avert New Flows of Refugees*, adopted on 16 December 1981, A/RES/36/148

UN General Assembly, *International Cooperation to Avert New Flows of Refugees Notes by Secretary General*, 13 May 1986, A/41/324

UN General Assembly, Report of the Secretary General on the International Conference on Indo-Chinese Refugees, 22 September 1989, A/44/523

UN General Assembly, Report of the Secretary General on the International Conference on Indo-Chinese Refugees, 22 September 1989, A/44/523

UN General Assembly Resolution on the Report of the Third Committee on the Office of the United Nations High Commissioner for Refugees, adopted on 12 February 1999, A/RES/53/125

UN General Assembly resolution on Strengthening of the coordination of humanitarian emergency assistance of the United Nations, A/RES/46/182

UN General Assembly Resolution on the Protection of and Assistance to Internally Displaced Persons, adopted on 25 February 2000, A/RES/54/167

UN General Assembly Resolution A/60/L.1, Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields: Follow-up to the outcome of the Millennium Summit

UN Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2

UNICEF, *State of the World's Children 1996*, 50th Anniversary Edition

Universal Declaration of Human Rights, adopted on 10 December 1948, 217 A (III)

UNHCR, Conclusions Adopted by the Executive Committee on International Refugee Protection, No. 19 (XXXI) Temporary Refuge (1980)

UNHCR, Report of the Meeting of the Expert Group on Temporary Refuge in Situations of Large-Scale Influx, Geneva, 21-24 April 1981, EC/SCP/16, para. 40(i)

UNHCR, *State of the World's Refugees 2000: Fifty Years of Humanitarian Action*, pp.37-59

UNHCR, A short biography of Lemkin, <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3b7255121c&query=genocide%20convention>

UN Security Council Resolution 582 on Iraq-Islamic Republic of Iran, adopted on 24 February 1986, S/RES/582 (1986)

UN Security Council Resolution 588 on Iraq-Islamic Republic of Iran, adopted on 8 October 1986, S/RES/588 (1986)

UN Security Council Resolution 612 on Iraq-Islamic Republic of Iran, adopted on 9 May 1988, S/RES/612 (1988)

UN Security Council Resolution 661 on Iraq-Kuwait, adopted on 6 August 1990, S/RES/661 (1990)

UN Security Council Resolution 688, adopted at its 2982nd meeting on 5 April 1991, S/RES/688 (1991)

UN Security Council Resolution 1325 on Women and Peace and Security, S/Res/1325 (2000), adopted on 31 October 2000

UNSC (2000), Peace Inextricably Linked with Equality between Women and Men says Security Council, in International Women's Day Statement, Press Release SC/6816, <http://www.un.org/press/en/2000/20000308.sc6816.doc.html>

UN Security Council Resolution S/RES/2139 adopted on 22 February 2014 at its 7116th meeting

UNISOM (2014), *Implementation of the Beijing Platform for Action Beijing +20 Review: Somalia Country Report*, available online: [https://unsom.unmissions.org/Portals/UNSOM/BPfA%20final%20report%20\(1\).pdf](https://unsom.unmissions.org/Portals/UNSOM/BPfA%20final%20report%20(1).pdf)

UN Security Council Resolution S/RES/1889 (2009), adopted on 5 October 2009

United Nations (1949), Study of Statelessness, E/112;E/112/Add.1

United Nations, *UN Yearbook on Disarmament 1970-1975*

United Nations, *UN Yearbook on Disarmament 1992*

United Nations, Short History of CEDAW Convention, available online: <http://www.un.org/womenwatch/daw/cedaw/history.htm>

UN Women (2000) *The Four Global Womens' Conferences 1975 – 1995: Historical Perspective*, published by the UN Department for Public Information

UN Women (2015) *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325*, New York: UN Women

WCD (2000) *Dams and Development: A New Framework for Decision-Making, The Report of the World Commission on Dams*, London and Sterling: Earthscan Publications

LETTERS AND CORRESPONDENCES

Email from Roberta Cohen to this researcher dated 10 March 2015

Letter from Elizabeth Ferris to rest of WCC members dated 1989

Letter from Elizabeth Ferris to Gallagher dated 1990

Letter from US Representative to the European Office of the UN, Morris Abram to Francis Deng dated 17 November 1992

Letter from the Permanent Mission of the People's Republic of China, dated 12 October 1992, GJ/92/047; Letter from the Permanent Mission of Pakistan, dated 13 November 1992, No.Pol-2/3/92

Letter from the International Catholic Migration Commission dated 29 October 1992

Letter from the Quaker United Nations Office, dated 2 November 1992; Letter from Caritas Internationalis, dated 5 November 1992 (Prot. No. DP 120/92)

Letter from UNPO dated 2 November 1992

Letter from Prof. Rainer Hofmann to Dr. Luke T. Lee dated 27 May 1997

Fax from Martin McPherson to Roberta Cohen dated 5 March 1992

Memorandum from Roberta Cohen to Dennis Gallagher dated 24 February 1992

Memorandum (confidential) from Roberta Cohen to Francis Deng, Robert Goldman, Daniel Helle, Walter Kälin, Manfred Nowak, and Maria Stavropoulou dated 20 June 1996

Confidential memo from Roberta Cohen to Francis Deng, Robert Goldman, Daniel Helle, Walter Kalin, Manfred Nowak and Maria Stavropoulou on Next Steps in the Legal Process, dated 20 June 1996

ANNEX: DEFINITIONS OF NORMS ACROSS DISCIPLINES

IDENTIFICATION	NAME OF AUTHOR	DEFINITION	CHARACTERISTICS
Just behaviour	Plato, (1894, 2000), <i>The Republic</i>	No attempt at a definition but provides characteristics	<ul style="list-style-type: none"> - Universal - Honorable - Not always legally binding – indicating self-imposition
Good and evil actions	Thomas Hobbes (1962), <i>Leviathan: Or the Matter, Form and Power of a Commonwealth Ecclesiastical and Civil</i>	No attempt at a definition but provides characteristics	<ul style="list-style-type: none"> - Value judgments (but Hobbes made these arguments in enriching the core idea of the Commonwealth)
Moral entities	Samuel von Pufendorf (1729), <i>On the Law of Nature and Nations</i>	Certain modes superadded to natural things and motions by understanding beings; chiefly for the guiding and tempering the freedom of voluntary action, and for the procuring of decent regularity in the method of life.	<ul style="list-style-type: none"> - “Modes” indicate means or ways of acting - Created by “understanding beings” – indicating a sense of already socialised persons who are able to create, recognise and apply the superadded modes - Creates regularity - Guidance for voluntary action – indicating a tension in the application of free will

			and the self-imposition of accepting and complying with certain modes of behaviour
Categorical imperatives	<p>Immanuel Kant (1964), <i>The Metaphysical Principles of Virtue</i></p> <p>Also sourced from: H.J. Paton (1947), <i>The Categorical Imperative: A Study in Kant's Moral Philosophy</i></p>	<p>These [categorical imperatives] are valid as laws only insofar as they can be seen to have a priori basis and to be necessary... They [doctrines of morality] command everyone without regard to his inclinations... But reason commands how one ought to act, even though no instance of such action might be found; moreover reasons pay no attention to the advantage which can accrue to us from such action, which admittedly only experience could teach.</p>	<ul style="list-style-type: none"> - Categorical imperatives are “a priori” and therefore pre-exist experience (distinction between <i>is</i> and <i>ought</i>) - They are applicable to everyone - They disregard or forego self-interest – indicating a tension in the exercising of free will (though not necessarily always) and the self-imposition of complying with categorical imperatives - There are no self-accruing advantages to complying with categorical imperatives
Norms	<p>Hans Kelsen (1991), <i>General Theory of Norms</i></p>	<p>The Ought – the norm – is the meaning of a willing or act of will, and – if the norm is a prescription or command – it is the meaning of an act directed to the behaviour of another person, an act whose</p>	<ul style="list-style-type: none"> - A norm is a prescription - Guides the behaviour of another - The norm creates an obligation on part of the addressee's behaviour –

		meaning is that another person (Or persons) is to behave in a certain way... The judgement that some behaviour is 'valuable' or 'has value' (and in this sense, is 'good') means that this behaviour – as modally indifferent substrate – is decreed to be obligatory in a norm, is the content of an Ought.	indicating a situation in which the addressee may or may comply with the norm by way of self-imposition - Creates a value judgment
Rules of Conduct	<p>Adam Smith (1976), <i>The Theory of Moral Sentiments</i>, edited by D.D. Raphael and A.L. Macfie</p> <p>Also sourced from: R.H. Coase (1976), Adam Smith's View of Man, <i>Selected Papers No.50</i>, Graduate School of Business</p>	Our continual observations upon the conduct of others insensibly lead us to form to ourselves certain general rules concerning what is fit and proper either to be done or to be avoided. These general rules of conduct are of great importance. They represent the only principle by which the bulk of mankind are capable of directing their actions.	<ul style="list-style-type: none"> - Norms are created by observation and experience of the conduct of others – indicating a social and interactional context - Guidance for behaviour that is fit and proper - Value judgments are created in considering the fit and proper nature of social behaviour
Norms	E. Pattaro (2000a), Language and Behaviour: An Introduction to the Normative Dimension, in W. Krawietz et al. (eds.), <i>The Reasonable as Rational? On Legal</i>	A norm is a pattern of behaviour, which is performed because it is conceived (felt, lived) as obligatory, and it is performed independently of any directive.	<ul style="list-style-type: none"> - Pattern of behaviour – indicating regularity, common understanding and accepted values - Obligatory behaviour indicates that it may or may not be followed - Performed independently

	<i>Argumentation and Justification</i>		– indicating self-imposition
Structure(s)	<p>Anthony Giddens (1979), <i>Central Problems in Social Theory: Action, Structure and Contradiction in Social Analysis</i></p> <p>(1984), <i>The Constitution of Society: Outline of the Theory of Structuration</i></p>	<p>Norms are identified as standards of behaviour or social practices in a society; or institutionalised approaches and responses in a society.</p> <p>Norms relate on the one hand to the constitution of meaning, and on the other to the sanctioning of modes of social conduct</p>	<ul style="list-style-type: none"> - Creates “standards of behaviour” in a society - Creates structures of “meaning” in society – indicating at some of the layers of social co-existence and cohesion - “Sanctioning” of modes of social conduct indicates the creation of oughts that may or may not be followed by actors
Norm	Karl-Dieter Opp (2002), <i>When Do Norms Emerge by Human Design and When by the Unintended Consequences of Human Action? : The Example of the No-smoking Norm, Rationality and Society</i>	A norm is understood as a statement that something ought or ought not to be the case.	<ul style="list-style-type: none"> - Expression or prescription of behaviour or expectation - Both regulative and enabling - Creates obligation that may or may not be fulfilled
Social Norms	Jon Elster (1989), <i>The Cement of Society: A Study of Social Order</i> , Cambridge: CUP	The propensity to feel shame and to anticipate sanctions by others at the thought of behaving in a certain, forbidden way.	<ul style="list-style-type: none"> - A norm can create an obligation which when not fulfilled has the power to cause shame

			<ul style="list-style-type: none"> - Guidance for behaviour that is allowed and forbidden – indicating its social nature through approval and/or disapproval by others - Sanctions can be expected; in effect there is no assured outcome to acting against a norm because sanctions are not always applied. They are non-consequentialist. And following a norm is also not aimed at any outcome
Conformity (this one is a bit of a stretch)	Elliot Aronson (2007), <i>The Social Animal</i> Tenth Edition	A change in a person's behaviour or opinions as a result of real or imagined pressure from a person or group of people.	<ul style="list-style-type: none"> - Real or imagined pressure as expressed by a person or group can guide or change a person's behaviour - The pressure as expressed by a person or group can be normative - Given that pressure is expressed by a person or group it is indicative of a social context or in the words of Aronson, social influence

Normative order consisting of norms and values	Talcott Parsons (1966), <i>Societies: Evolutionary and Comparative Perspectives</i> , New Jersey: Prentice-Hall Inc.	<p>Values – in the pattern sense – we regard as the primary connecting element between the social and cultural systems. Values take primacy in the pattern maintenance functioning of the social system. pp.18-19</p> <p>Norms, however, are primarily social. They have regulatory significance for social processes and relationships but do not embody “principles” which are applicable beyond social organization, or often even a particular social system. Norms are primarily integrative; they regulate the great variety of processes that contribute to the implementation of patterned value commitments. pp.18-19</p>	<ul style="list-style-type: none"> - Values are higher in the social structural chain than norms - Norms guide behaviour whereas values only indicate the pattern (good, bad, right, wrong, etc.) without any expressed modes of allowed or forbidden behaviour - Conformity to a norm indicates compliance that over time becomes an internalised value
Social Action	Max Weber, <i>The Interpretation of Social Reality</i> , Edited by J.E.T. Eldridge (1971), London: Michael Joseph	<p>Includes both failure to act and passive acquiescence, may be oriented to the past, present, or expected future behaviour of others. Not every type of contact of human beings has a social character; this is rather confined to cases where the actor's behaviour is meaningfully oriented to that of others. pp.76-77</p> <p>Social action that can be classified in</p>	<ul style="list-style-type: none"> - Guides human behaviour - The meaningful nature of the action indicates its social character as well as its intersubjective nature - Creates value-judgements - Also indicates a need for the actor to believe that a substantial number of others also expects the

		<p>terms of rational orientation to an absolute value; involving a conscious belief in the absolute value of some ethical, aesthetic, religious, or other form of behaviour, entirely for its own sake and independently of any prospects of external success. It can at the same time be oriented towards discrete individual ends, affectual reactions and/or tradition. p.78</p>	<p>action and will act in the same manner in a respective situation</p>
Norms	<p>George C. Homans (1951), <i>The Human Group</i>, London: Routledge and Kegan Paul Ltd.</p>	<p>A norm, then, is an idea in the minds of the members of a group, an idea that can be put in the form of a statement specifying what the members of other men should do, ought to do, are expected to so, under given circumstances...A statement of the kind described is a norm only if any departure of real behaviour from the norm is followed by some punishment. A norm in this sense is what some sociologists call a sanction pattern. p.123</p> <p>Our norms are ideas. They are not behaviour itself, but what people think behaviour ought to be. p.124</p> <p>It is clear that norms do not materialise out of nothing, but emerge from ongoing activities. p.125</p>	<ul style="list-style-type: none"> - Norm is an ought that guides the behaviour of members of a group. This indicates obligations that do not foreclose the possibility of non-compliance - Sanctions follow in the event of non-compliance - Norms evolve through experience and internalised values

		<p>If we think of a norm as a goal that a group wishes to reach, we can see that the goal is not set up, like the finish line of a race, before race starts, but rather that the group decides, after it starts running, what the finish line will be. p.126</p>	
Values	<p>Emmanuel Adler (1991), Cognitive Evolution: A Dynamic Approach for the Study of International Relations and their Progress, in Emanuel Adler and Beverly Crawford (eds.) <i>Progress in Postwar International Relations</i></p>	<p>Values are mixed with varying amounts of knowledge, beliefs and expectations because our judgments of what should be are related to our judgements of what is</p>	<ul style="list-style-type: none"> - Involves standards of beliefs and expectations - “Expectations” involve an interactional or relational context; primarily social - Indicates an oughtness which creates a sense of obligation that may or may not become reality as it is experienced
Norms	<p>Martha Finnemore and Kathryn Sikkink (1998), International norm dynamics and political change, <i>International Organization</i></p>	<p>Standard of appropriate behaviour for actors with a given identity.</p>	<ul style="list-style-type: none"> - Common identity creates appropriate behaviour - Common identity also indicates the intersubjective nature of the standards of accepted or appropriate behaviour - These are accepted as standard – indicating an obligation on the part of the actor to comply.

			<p>Compliance is self-imposed</p> <ul style="list-style-type: none"> - There is no mention of these standards being legally binding
Norms; International norms	<p>Janice E. Thompson (1993), Norms in International Relations: A Conceptual Analysis Analysis, <i>International Journal of Group Tensions</i></p>	<p>Norms should be viewed, in the first instance, as outcomes of individual beliefs which subsequently can exert influence over behaviour independent of the beliefs of individual actors. In other words, norms can assume the character of structures once they are embedded in social institutions.</p> <p>International norms should be used to refer to the normal, usual or customary practise of states.</p>	<ul style="list-style-type: none"> - Institutionalised guidance for behaviour - These guidance have been formed from experience of individual beliefs
Rule and Rules	<p>Nicholas Onuf (1998), "Constructivism: A User's Manual" in Vendulka Kubáľková, Nicholas Onuf and Paul Kowert (eds.) <i>International Relations in a Constructed World</i></p> <p>Also sourced from: (1989), <i>World of Our Making</i></p>	<p>A rule is a statement that tells people what to do. The "what" in the question is a standard for people's conduct in situation that we can identify as being alike, and can expect to encounter. The "should" tells us to match our conduct to that standard. If we fail to do what the rule tells us to, then we can expect consequences that some other rule will bring into effect when other people follow the rule calling for such</p>	<ul style="list-style-type: none"> - Guides behaviour in social situations - As a socialised actor, the person is able to match the situation to the behaviour required - Meeting the standard means that a value-judgment is attached to the appropriate behaviour. It also indicates that an ought is created

		<p>consequences. p.59</p> <p>All the ways in which people deal with rules may be called practices. p.59</p> <p>Rules and related practices frequently form a stable (but never fixed) pattern suiting agents' intentions. These are institutions. p.61</p> <p>Any stable pattern of rules, institutions, and unintended consequences gives society a structure, recognizable as such to any observer. p.61</p>	<ul style="list-style-type: none"> - It is up to the actor to follow or not follow the standard through self-imposition - Consequences can be expected for non-compliance
Rules; Norms	<p>Friedrich Kratochwil (1989), <i>Rules, Norms and Decisions: on the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs</i></p>	<p>Norms are directives, not all directives function like norms, and while all rules are norms, not all norms exhibit rule-like characteristics. p.10</p> <p>Rules and norms are therefore guidance devices which are designed to simplify choices and impart "rationality" to situations by delineating the factors that a decision-maker has to take into account. p.10</p>	<ul style="list-style-type: none"> - Norms are designed - They are guidance that simplifies choices to be made by decision-makers. This indicates that decision-makers have choices within situations where norms can be applied. This means that actors can choose not to comply with the norm

Structures of common or collective knowledge	Alexander Wendt (1999), <i>Social Theory of International Politics</i> , CUP	<p>Common knowledge requires interlocking beliefs, not just everyone having the same beliefs. This interlocking quality gives common knowledge, and the culture forms it constitutes, an at once subjective and intersubjective character. Common knowledge is subjective in the sense that the beliefs that make it up are in actors' heads, and figure in intentional explanations. Yet because those must be accurate beliefs about others' beliefs, it is also an intersubjective phenomenon which confronts actors as an objective social fact that cannot be individually wished away...common knowledge is firmly an interaction-level phenomenon. P.160</p> <p>Structures of collective knowledge depend on actors believing something that induces them to engage in practices that reproduce those structures...p.162</p>	<ul style="list-style-type: none"> - The intersubjective nature of the structures of common knowledge indicates the social or interactional context - These structures are seen as facts (but can't facts be disputed?) - These facts may not only, at times, cause behaviour in a commonly expected manner but also constitute the identity of the group that shares the common knowledge
Norms	Annika Björkdahl (2002), <i>Norms in International Relations: Some Conceptual and Methodological</i>	A set of intersubjective understandings and collective expectations regarding the proper behaviour of states and other actors in a given context or identity.	<ul style="list-style-type: none"> - Shared set of meanings and understandings - Guides behaviour of states with a value judgment of that which is

	Reflections, <i>Cambridge Review of International Affairs</i>		proper and that which is not - Creates obligation that may or not be complied with; also indicates self-imposition
International Norms	Gregory Raymond (1997), Problems and prospects in the study of international norms, <i>Mershon International Studies Review</i>	<p>International norms are thought of as sources of action in three ways: they may be constitutive in the sense that they define what counts as a certain activity; they may be constraining in that they enjoin an actor from behaving in a particular way; or they may be enabling by allowing specific actions.</p> <p>Norms serve as signposts (Wittgenstein 1968:39) or heuristic mental aids to warn policymakers of the prearranged actions that various states will take under certain circumstances.</p>	<ul style="list-style-type: none"> - Guidance for members of a group to behave in certain ways in specific situations. It will define actions that are allowed and prohibited. - It provides a mental map of expectations based on experience
Norms	Robert Axelrod	A norm exists in a given social setting to the extent that individuals usually act in a certain way and are often punished when seen not to be acting in this way.	<ul style="list-style-type: none"> - Dependent on compliance - The extent of compliance indicates a critical mass - Contextualising norms within a “social setting”

			<p>implies intersubjectivity, ordered social interaction with the possibility of social cohesion</p> <ul style="list-style-type: none"> - Punishment is not considered absolute but is a possibility in the event of non-compliance
Collective intentionality; Rules	<p>John Gerard Ruggie (1998), What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge, <i>International Organization</i></p>	<p>Collective intentionality creates meaning. They also establish intersubjective frameworks of understanding.</p> <p>Regulative rules are intended to have causal effects.</p> <p>Constitutive rules define the set of practices that make up a particular class of consciously organised social activity – that is to say, they specify <i>what counts as</i> that activity. Constitutive rules are the institutional foundation of all social life. No consciously organised realm of human activity is imaginable without them.</p>	<ul style="list-style-type: none"> - Rules are framework that can promote collective intentionality - It provides a framework for meaning and understanding that its members comprehend. This indicates that there can be expectations and obligations - Constitutive rules are the overarching framework for social cohesion of any kind
Norms	<p>Ann Florini (1996), The Evolution of International Norms, <i>International</i></p>	<p>As standards of behaviour and not just behavioural regularities.</p>	<ul style="list-style-type: none"> - Distinguishes between normal and normative behaviour

	<i>Studies Quarterly</i>		<ul style="list-style-type: none"> - Guidance for one's own and others behaviour - Creates a sense of obligation that may or may not be carried through - The shared and accepted standards of behaviour are considered as benchmarks because these standards are seen as legitimate
Norms as an element of regimes (principles, rules and decision-making procedures are the other elements)	Stephen D. Krasner (ed.) (1983), <i>International Regimes</i> , Ithaca and London: Cornell University Press	<p>Norms are standards of behaviour defined in terms of rights and obligations. p.2</p> <p>Principles are beliefs of fact, causation and rectitude.</p> <p>Rules are specific prescriptions or proscriptions for action</p> <p>Decision-making procedures are prevailing practices for making and implementing collective choice.</p> <p>Changes in rules and decision-making procedures are changes within regimes (p.3) whereas changes in norms and principles are changes of the regime itself (p.4).</p>	<ul style="list-style-type: none"> - Norms expressed or defined by rights and obligations indicate that there is behaviour that ought to be followed. But there is always that possibility that members might choose not to follow an accepted and shared standard - Sanctions are a part of regimes theory - Norms are instrumental to the exist, progress or change of regimes

Norms and rules used interchangeably	Wayne Sandholtz, "Explaining International Norm Change" in Wayne Sandholtz and Kendall Stiles (eds.) <i>International Norms and Cycles of Change</i> (2008)	Standards of conduct, indicating what behaviours are permissible for a given actor in a given situation.	<ul style="list-style-type: none"> - Permissible behaviour indicates that there is behaviour that ought to be followed. But there is always that possibility that members might choose not to follow an accepted and shared standard - Standard also indicates values, morals and degrees of compliance
Norms	Cristina Bicchieri, "Learning to Cooperate" in Cristina Bicchieri, Richard Jeffrey and Brian Skyrms (eds.) <i>The Dynamics of Norms</i> (1997), CUP	<p>Norms depict a socialised actor whose behaviour is not outcome-oriented, since when acting in accordance with a norm one does not engage in a rational calculation, nor does one pay too much attention to the action's consequences. p.22</p> <p>Norms usually allow an individual to anticipate the behaviour of other. We normally expect people to conform to norms, and we expect others to expect us to conform, too. A social norm depends for its existence on a cluster of expectations. p.25</p>	<ul style="list-style-type: none"> - Norms exist in a social context of mutual expectations. It creates obligations that may or may not be fulfilled - Sanctions may not always follow on non-compliance - Norms are not outcome-oriented